

A
DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,
1916,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES,
1866—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE FARRISER AT LAW, ADVOCATE OF THE HIGH COURT, CALCUTTA,
AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

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PREFACE.

THIS Volume is published as a supplement to the new Consolidated Digest, 183C—1909. It contains the cases reported in the four Series of the Indian Law Reports for 1916, and the Law Reports, Indian Appeals and the Calcutta Weekly Notes for the year 1915-16.

The different sets of Law Reports in which the same cases have been reported, are specifically noted in the "Table of Cases" published with this Volume.

For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list arranged in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA :

The 23rd July 1917.

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THE HIGH COURT, CALCUTTA, 1916.

CHIEF JUSTICE

The Hon'ble SIR LANCELOT SANDERSON, Kt, K C

PUISNE JUDGES

The Hon'ble SIR JOHN G WOODROFFE, Kt
 " " " ASRUTOSH MOOKERJEE, Kt, CSI
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The Hon'ble G H B HENRICK K C, *Advocate General (Retired)*
 " " SIR SATYENDRA SINHA, *Advocate General (Offg)*
 " " B C MITTER, *Standing Counsel*

THE HIGH COURT, BOMBAY, 1916

CHIEF JUSTICE

The Hon'ble SIR BASIL SCOTT, Kt *On deputation.*
 " " " S L BATCHELOR, Kt (*Acting*)

PUISNE JUDGES

The Hon'ble SIR S L BATCHELOR, Kt
 " " " DINSHA D DAVAR Kt (*Deed*)
 " " F C O BEAMAN
 " " SIR J J HEATON, Kt
 " " N C MACLEOD
 " " L A SHAH
 " " N W KEMP (*Acting*)
 " " A M NAJJI (*Acting*)
 " " A B MARTEN

The Hon'ble M R JARDINE, *Advocate General (Resigned)*
 " " T J STRANGMAN, *Advocate General*
 MR G D FRENCH, *Legal Memembrancer*

* Appointed Judge of the Patna High Court from the 1st March 1916

THE HIGH COURT, MADRAS, 1916.

CHIEF JUSTICE :

The Hon'ble SIR JOHN WALLIS, Kt.
 " " ABDUR RAHIM (*Acting*).

PUISNE JUDGES :

The Hon'ble ABDUR RAHIM.
 " " SIR WILLIAM B. AYLING, Kt.
 " " F. DUPRE OLDFIELD.
 " " T. SADASIVA AYYAR, *Dewan Bahadur*.
 " " C. G. SPENCER.
 " " V. M. COUTTS TROTTER.
 " " T. V. SESHAGIRI AYYAR.
 " " J. H. BAKEWELL (*Additional*).
 " " C. F. NAPIER (*Additional*).
 " " C. V. KUMARASWAMI SASTRIAR, *Dewan Bahadur* (*Additional*).
 " " K. SRINIVASA AYYANGAR (*Additional*).
 " " W. W. PHILLIPS (*Offg.*).
 " " L. G. MOORE (*Offg.*).
 " " C. KRISHNAN (*Offg.*).
 " " J. G. BURN (*Offg.*).

ADVOCATE GENERAL :

The Hon'ble S. SRINIVASA AYYANGAR.

THE HIGH COURT, ALLAHABAD, 1916.

CHIEF JUSTICE :

The Hon'ble SIR HENRY G. RICHARDS, Kt., K.C.
 " " " GEORGE E. KNOX, Kt. (*Acting*).

PUISNE JUDGES :

The Hon'ble SIR GEORGE E. KNOX, Kt.
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 " " WILLIAM TUDBALL.
 " " MUHAMMAD RAFIQ.
 " " THEODORE CARO PIGGOTT.
 " " HENRY CECIL WALSH, K.C.
 " " BENJAMIN LINDSAY (*Offg.*).
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 " " LOUIS STUART (*Offg.*).

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And those other members of the Privy Council who are within the provisions of the Statutes 3 & 4 Will IV, c 41, 44 Vict c 3 and 50 & 51 Vict c 70

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OF

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ADEN SETTLEMENT REGULATION (VII OF 1909).

1. 13—*Municipal affairs of Aden—Executive Committee—Rating of property for purposes of taxation—Rating value fixed by the Resident at Aden on a rating appeal—Finality of the decision of the Resident as to value—Jurisdiction of Civil Courts to examine the value on a civil suit—Rule made under the Regulation to give finality to the Resident's decision.*

sanction of the Local Government, to make rules to provide for "the assessment and collection of any toll, cess, tax or other impost imposed under the Regulation." The rules so made provided, *inter alia*, for the preparation of an assessment list:

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containing " the annual letting value or other valuation on which the property is assessed," for complaints to the Executive Committee where any property was for the time being entered in the list or in which the entered rateable value had been increased, and for appeals against any rateable value to the Judge of the Resident's Court. Rule 12 provided that after appeals, if any, were decided and the results noted in the assessment list, all rateable values so entered in the list were final. The lower Courts held, on a construction of the above rule, that it made the decision of the Judge of the Resident's Court in a rating appeal conclusive, and that the aggrieved party could not question it by a civil suit. *Held*, that the rule 12, read as it had been by the lower Courts, was *ultra vires*, inasmuch as a distinct unequivocal enactment was required for the purpose of either adding to or taking away the jurisdiction of a Court. **ABDUL-LABHAI LALLJEE v. THE EXECUTIVE COMMITTEE, ADEN (1916)** . . . I. L. R. 40 Bom. 446

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ADMIRALTY JURISDICTION.

Collision case—Decision of trial Judge, weight to be attached to—Trial with aid of Nautical Assessors. In collision cases, no rule is better established than this, that when questions of fact alone arise, a Court of Appeal should be most chary of interfering with the decision of a trial Judge who has seen the witnesses and had the opportunity of forming his estimate of them by their demeanour. Only in exceptional cases and for special reasons, should a Court which has not had this advantage reverse the judgment of the trial Judge on questions of fact. **RIVERS-STEAM NAVIGATION COMPANY v. THE HATHOR STEAMSHIP COMPANY, LD. (1916)**

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1. ————— Co-owners—Notice of hostile claim, if necessary—Possession, hostile at commencement—Subsequent accrual of title as co-owner—Possession continued, not hostile—Limitation Act (IX of 1908), Sch. II, Arts. 134 and 144. The plaintiff and the third defendant were the reversionary heirs of one C who had mortgaged the suit properties to one P. The third defendant's father purchased the properties from P in 1893 without notice of the mortgage and has been in possession of the same ever since. The widow of C died on the 6th September 1900. The plaintiff brought this suit on the 2nd September 1912 to redeem the properties. The third defendant pleaded that the suit was barred by limitation: *Held*, that the suit was not barred by limitation. Possession held by one of the co-owners will not be adverse to the others until they have notice of the hostile claim. Though possession was hostile when it commenced, still such possession will not continue to be hostile on the accrual of a peaceful title before the completion of the adverse possession. **VELAYUTHAM v. SUBBAROYA (1915)** . . . I. L. R. 39 Mad. 879

2. ————— Simple mortgage—Dispossession of mortgagor after mortgage, not adverse to the mortgagee. The possession of a trespasser who has dispossessed a mortgagor, the mortgage being simple is not adverse to the simple mortgagee. **Parthasarathy Naicker v. Lakshmana Naicker, I. L. R. 35 Mad. 231**, followed. **RAMASAMI CHETTI v. PONNA PADAYACHI, I. L. R. 36 Mad. 97**, overruled. **VYAPURI v. SONAMMA BOI AMMANI (1915)** . . . I. L. R. 39 Mad. 811

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AGRA TENANCY ACT (II OF 1901).

s. 22—

1. *Occupancy holding—Hindu female in possession as such of occupancy holding—Succession.* There is nothing in the Agra Tenancy Act to enlarge the estate in an occupancy holding of a Hindu female in possession at the time the Act of 1901 was passed, beyond the ordinary estate of a Hindu female. The Act not having provided for the devolution of the interest in an occupancy holding where it was, at the passing of the Act, in the possession of a Hindu female as such, the rights of the parties claiming such holding on the death of the last female occupant must be ascertained according to the ordinary Hindu Law. *BISHESHVAR AHIR v. DEKHARAN AHIR* (1916) I. L. R. 38 All. 197

2. *Occupancy holding—Succession—Holding owned by a joint Hindu family.* An occupancy holding owned by a joint Hindu family does not devolve at the death of the last surviving member of the joint family on that member's widow. *MAHABIR SINGH v. BHAGWATI*, (1916) I. L. R. 38 All. 323

ss. 58, 177 (c)—*Suit for ejectment—Question of proprietary title—Appeal—Jurisdiction.* In a suit for ejectment under section 58 of the Tenancy Act, defendant denied the plaintiff's title and set up another man as his landlord. The Court of first instance decreed the claim. *Held*, that an appeal in such a case lay to the District Judge under s. 177 (c) of the Act, inasmuch as the question of the plaintiff's proprietary title was put in issue in the Court of first instance and was a matter in issue in the appeal. *GANGA PRASAD v. HAN NARAIN*, (1916) I. L. R. 38 All. 465

s. 124—*Distress—Attachment—Penal Code (Act XLII of 1900), s. 32.* A distress legally carried out according to the provisions of the Agra

AGRA TENANCY ACT (II OF 1901)—contd.

s. 124—contd.

Tenancy Act 1901, takes priority over the rights of a decree holder who has attached the crops distressed, and thus notwithstanding that the distress may be the result of collusion between the landlord and his tenants. When there are certain cultivators acting under section 124 (f) of the Agra Tenancy Act, and a landlord certain crops which had been distressed by their landlord but which had also been previously attached by a decree holder. *Held* that they had committed no offence. *EMPEROR v. RAM DATAL* (1915) I. L. R. 38 All. 40

s. 164—

1. *Jurisdiction—Civil and Revenue Courts—Profits—Income derived from land and houses in the aboli.* *Held*, that the income derived from land and houses in the aboli could not properly be regarded as profits of the mahal in respect of which a suit was cognizable exclusively by the Court of Revenue under section 164 of the Agra Tenancy Act, 1901. *Baldeo Singh v. Beni Singh*, 1899, *All Weekly Notes*, 27 referred to *DIGRAJ SINGH v. HIRA DEVI* (1916) I. L. R. 38 All. 322

2. *Suit against lambardar for profits—Sir and khudkash land held by co-sharers to be taken into account.* *Held*, that in a suit for profits brought by a co-sharer against a lambardar under s. 164 of the Agra Tenancy Act, 1901, the plaintiff is entitled to have taken into account the profits of sir and khudkash land held by the other co-sharers in the village. *Bishambhar Voh v. Bhullo*, I. L. R. 34 All. 98 discussed *Gulzar Mal v. Jai Ram* I. L. R. 36 All. 111, referred to *GANGA SINGH v. RAM DATAL* (1916) I. L. R. 38 All. 223

ss. 182, 183—*Suit for rent—Second Appeal to District Judge—Remand—Appeal—Civil Procedure Code (1908) Order XLII, rule 23.* *Held* that an appeal lies from an order of remand under Order XLII, rule 23 of the Code of Civil Procedure made by a District Judge in an appeal in a suit for rent under s. 180, clause (2) of the Agra Tenancy Act 1901. *GULZAR LAL v. LATIF HUSAIN* (1916) I. L. R. 38 All. 181

s. 202—*Remand—Effect of Revenue Court decision on question of tenancy in a farmer's suit on a suit for rent in a Civil Court for ejectment on trespass.* Defendants were tenants and the District Judge took proceedings in the Revenue Courts to eject them as tenants at will. The Assistant Collector dismissed the suit but the Commissioner allowed the appeal. The Board of Revenue, however, in second appeal dismissed the suit. In the meantime had executed the decree passed by the Commissioner and obtained possession. Upon the decree passed by the Board of Revenue in the first appeal the defendants made an application to be restored to possession, but it was rejected as time barred. It was then brought the present suit in which the defendants as trespassers alleging that he had been in possession of the land as his third landlord.

AGRA TENANCY ACT (II OF 1901)—concl'd.

s. 202—concl'd.

that the defendants had entered into forcible possession and that the effect of the Revenue Court proceedings was to extinguish the tenancy. The defendants pleaded that the tenancy subsisted. The Court of first instance decided that the tenancy was subsisting, but granted to the plaintiff damages for forcible dispossession. The lower Appellate Court remanded the case to the first Court with directions to act in accordance with the provisions of s. 202 of the Agra Tenancy Act. *Held*, that the order was the proper one to make in the circumstances of the case, and the question whether by reason of the events that had happened since the decision of the Board of Revenue the tenancy was extinguished or not was one which the Revenue Courts were competent to decide. *Maru v. Gauri Sahai*, (1904) All. Weekly Notes, 46. *Sarju Misir v. Bindesri Pershad*, 11 All. L. J. 691, referred to. *BHAWAN v. MADAN MOHAN LAL* (1916).

I. L. R. 38 All. 533

AGREEMENT.

Agreement to compound criminal case compoundable with leave of Court only if oppose to public policy—Offence not so compoundable alleged but no summons issued—Effect. In a Criminal case the Magistrate after examining the complainant summoned the accused under s. 325, Penal Code, although allegations were made in the petition of complaint of an offence under s. 147, Penal Code, also. An agreement was entered into between the parties and with the leave of the Court the case was compromised. *Held*, that a case under s. 325, Penal Code, being compoundable with the leave of the Court and the Magistrate having given permission to compound the case, the contract was not opposed to public policy; the allegation in the petition of complaint of a non-compoundable offence under s. 147, Penal Code, which was not accepted by the Magistrate when issuing process made no difference. *MAHAMMAD ISMAIL v. SAMAD ALI BHUIYAN* (1915) . . . 20 C. W. N. 946

AGREEMENT TO SELL.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54. I. L. R. 39 Mad. 462

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See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 22.

I. L. R. 40 Bom. 194

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 72.

I. L. R. 40 Bom. 189

ALIEN ENEMY, SUIT AGAINST.

If maintainable during the continuance of war—Internment, its object. It does not matter whether the cause of action arose before or after the war, an alien enemy can be sued in our Courts and has every right to present his case before the Courts in accordance with the laws of procedure. *Halsey v. Lowenfeld* [1916]

ALIEN ENEMY, SUIT AGAINST—concl'd.

1 K. B. 140, followed. The fact that the defendant has been interned does not make any difference, as the object of internment is to prevent him from doing mischief and not to cut down his liabilities. *ABDUL QUADER v. FRITZ KAPP* (1916) . . . I. L. R. 43 Calc. 1140

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I. L. R. 39 Mad. 1035

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I. L. R. 38 All. 688

ALIYASANTANA LAW.

Inheritance—Woman's self-acquisition—All the members of her branch, and not her nearest blood relation alone, heirs. A female member in an Aliyasantana family died issueless leaving self-acquired property. There was no issue of her mother then living, and the only relations the deceased left behind her were her own deceased mother's sister and the issue of another sister of her mother. It being contended that the sole heir was the deceased's mother's sister as being the nearest relation to her, to the exclusion of the other members of the branch to which the deceased belonged at the time of her death: *Held*, that under the Aliyasantana law all the members of the nearest non-extinct branch to which the issueless deceased belonged at the time of her death (*viz.* her maternal grandmother's descendants), were entitled to succeed and not only one of them, *viz.*, her mother's sister, who is nearer in degree than others. *Antamma v. Kaveri*, I. L. R. 7 Mad. 575, referred to. *MANJAPPA AJRI v. MARUDEVI HENGSHU* (1915)

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ANCESTRAL PROPERTY.

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See CHOTA NAGPUR TENANCY ACT (BENG
VI of 1908), ss. 87, 238, 264
I. L. R. 43 Calc. 136

See CIVIL PROCEDURE CODE (1908)
s. 104(f) I. L. R. 38 All. 380

See CIVIL PROCEDURE CODE (1908) O IX,
n. 12 I. L. R. 38 All. 357

See CIVIL PROCEDURE CODE (1908), SCH
II, PARA 21, O XLIII, n. 1
I. L. R. 38 All. 297

See COMPANIES ACT (VI of 1882) s. 169
I. L. R. 38 All. 537

See COMPROMISE I. L. R. 43 Calc. 85

See CONSOLIDATION OF APPEALS

See CRIMINAL PROCEDURE CODE, s. 110
I. L. R. 38 All. 393

See CRIMINAL PROCEDURE CODE, ss. 408,
413 I. L. R. 38 All. 395

See LAND ACQUISITION
I. L. R. 43 Calc. 665

See PRESIDENCY TOWNS INSOLVENCY ACT
(III of 1909), ss. 6, 9, 25, 38, 39 (2), (a),
(b), (c), (d), (f), (g)
I. L. R. 40 Bom. 461

See SECURITY FOR COSTS
I. L. R. 43 Calc. 243

See TRANSFER OF PROPERTY ACT (IV of
1882), ss. 58, 59
I. L. R. 40 Bom. 321

See UNITED PROVINCES LAND REVENUE
ACT (III of 1901), s. 115 (f) (5)
I. L. R. 38 All. 70

— against order of extension—

See CIVIL PROCEDURE CODE (ACT V of
1908), O XLIV, n. 8, PROVISION
I. L. R. 39 Mad. 876

— against the order of a single Judge—

See CRIMINAL PROCEDURE CODE (ACT V
of 1908), s. 488
I. L. R. 39 Mad. 472

APPEAL—contd

— by defendant—

See TITLE, SUIT FOR, DECLARATION OF
I. L. R. 38 All. 440

— conversion of, into civil revision
petition—

See PROVINCIAL INSOLVENCY ACT (III of
1907), s. 46, CL. (3)
I. L. R. 39 Mad. 593

— from order declining to arrest or
attach property—

See CIVIL PROCEDURE CODE (ACT V of
1908), O XLIII, n. 1 (r), AND O
XLIV, n. 2, CL. (3)
I. L. R. 39 Mad. 907

— from order of a single Judge—

See LETTERS PATENT (MADRAS), s. 13
I. L. R. 39 Mad. 235

— out of time—

See PROVINCIAL INSOLVENCY ACT (III of
1907), s. 46, CL. (3)
I. L. R. 39 Mad. 593

— presentation of—

See CRIMINAL PROCEDURE CODE (ACT V
of 1908), ss. 421, 233, 337
I. L. R. 39 Mad. 527

— right of—

See CIVIL PROCEDURE CODE (ACT V of
1908), ss. 47, 73, 101
I. L. R. 39 Mad. 570

— service of notice of, on District
Magistrate—

See CRIMINAL PROCEDURE CODE (ACT V
of 1908), ss. 439, 422, 423
I. L. R. 39 Mad. 505

1. — Consolidation of
appeals—Plaint, amendment of, when allowable—
Practice The Code of Civil Procedure contains no
provisions for consolidating proceedings in India.
Whether the Court has jurisdiction to consolidate
proceedings or not, it would only do so where the
consolidation is asked for before the trial of the
suits begun or where the evidence given in the two
cases is common in both of them. No amendment
of plaint can be allowed where the proposed amend-
ment would take away from the defendants, if
allowed, a right that they would have if the plaint
was had proceeded against them by way of original
suit. *JANARDAN KISHORE LAL v. SHRI PRESHAD
RAM* (1913) I. L. R. 43 Calc. 95

2. — Order of Judge
setting on Original Side rejecting an application for
an order to set aside dismissal of suit, whether ap-
pealable—Jurisdiction—Letters Patent, 1965 at 13,
11—Judgment—Civil Procedure Code Act V of
1908 at 104, 117 O IX, n. 5, 2 O XLIII, r.
1(c) O XLIX, r. 1—Costs An appeal lies to
the High Court in its Appellate Jurisdiction from
an order made under Order IX, rule 9 of the Civil

APPEAL—contd.

Procedure Code, by a single Judge sitting on the Original Side of the High Court, rejecting an application for an order to set aside the dismissal of a suit. *Hurriah Chunder Chowdhury v. Kali Sunderi Debi*, I. L. R. 9 Calc. 482, *Cobinula Lal Das v. Shib Das Chatterjee*, I. L. R. 33 Calc. 1323, *Munsab Ali v. Nihal Chand*, I. L. R. 15 All. 359, *Brij Coomaree v. Ramriek Das*, 5 C. W. N. 781, *Toolsee Money Dasse v. Sudevi Dasse*, I. L. R., 26 Calc. 361, *The Justices of the Peace for Calcutta v. The Oriental Gas Co.*, 8 B. L. R. 433, *Sonabai v. Ahmed-ahni Habibhai*, 9 Bom. H. C. 398, *Hadjee Ismail Hadjee Hubbeeb v. Hadjee Mahomed Hadjee Joosub*, 13 B. L. R. 91, referred to. *Gobinda Lal v. Shib Das*, I. L. R. 33 Calc. 1323, dissented from by Mookerjee, J. The order of dismissal set aside and the suit restored by the Court of Appeal, subject to an order for costs. *Southampton, Isle of Wight, Portsmouth Improved Steamboat Co. v. Rawlins*, 34 L. J. Ch. 287, *Michell v. Wilson*, 25 W. R. 380, *Birch v. Williams*, 24 W. R. 700, *Hall v. Lewis*, 2 Keen 318, *Muruga Chetty v. Rajasami*, 22 Mad. L. J. 284, *The Oriental Finance Corporation v. The Mercantile Credit and Finance Corporation*, 2 Bom. H. C. 282, and *Burgoin v. Taylor*, L. R. 9 H. D. 1, referred to by Mookerjee J. *MATHURA SUNDARI DAS v. HARAN CHANDRA SAHA* (1915)

I. L. R. 43 Calc. 857

3. ————— *Question of Fact—Weight to be given to the opinion of Trial Judge—Duty of Court of Appeal—Practice—Broker's Commission.* Decision of a Judge sitting on the Original Side decreeing a claim for commission reversed on appeal on questions of fact [SANDERSON, J. dissenting]. Principles guiding the Court of Appeal in dealing with the findings of fact arrived at by a Judge of the Court of first instance discussed. *LALJE MAHOMED v. GUZDAR* (1915).

I. L. R. 43 Calc. 833

4. ————— *Review—Civil Procedure Code (Act V of 1908) O. XLI, r. 11; O. XLVII, r. 4—Notice of review to respondents, if necessary—"Opposite Party"—Grounds of appeal, if restricted, on review—Bengal Tenancy Act (VIII of 1885) ss. 85, 159, 161—Sale in execution of a decree under Chap. XIV of that Act—Purchase by a stranger—Meaning of "encumbrances" in s. 161 of the Bengal Tenancy Act.* Where an appeal was summarily dismissed by a Divisional Bench of this Court and such order was ultimately set aside on review by the said Bench on an *ex parte* application without notice to the respondents:—*Held*, that the last order was valid even in the absence of such notice. *Joy Kumar Dutt Jha v. Eshree Jand Dutt Jha*, 16 W. R. 475, *Haladhar Jha v. Ayed Shah Mahomed*, 25 Ind. Cas. 880, followed. *Abdul Hakim Chowdhury v. Hem Chandra Das*, I. L. R. 42 Calc. 433, dissented from. The expression "opposite party" in O. XLVII, r. 4 of the Civil Procedure Code means the party interested to support the order sought to be vacated or modified upon the application for review. After an appeal is allowed under O. XLI, 12, after review, the appellants are not res-

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tricted to the single ground for appeal which was the basis for review, but the whole appeal is before the Court when the case is taken up for final disposal. *Lukhi Narain v. Sri Ram Chandra*, 15 C. W. N. 921, followed. The rights of a stranger who purchases at a sale in execution of a decree under Chapter XIV of the Bengal Tenancy Act, are regulated by s. 159 and not by s. 85 of that Act. The word "encumbrances" in s. 161 of that Act, includes the interests of an under-raiyat. *JANAKI NATH HORE v. PRABHASINI DASEE* (1915)

I. L. R. 43 Calc. 178

5. ————— *Death of one of the respondents—Decree passed in ignorance of appellant not entitled to rehearing.* The death of one of the defendants or respondents does not abate a suit or appeal. *Duke v. Davies*, [1890] 2 Q. B. 260, referred to. An unsuccessful litigant has no right, therefore, to argue his case more than once merely on the ground that one of the other parties to the proceeding was dead at the time of the hearing. *Dictum in Goda Coopooramier v. Soondarammal*, I. L. R. 36 Mad. 167, approved. *VELLA-YAN CHETTY v. MAHALINGA AYYAR* (1914)

I. L. R. 39 Mad. 386

APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (1908), s. 109.

I. L. R. 38 All. 150

See CIVIL PROCEDURE CODE (1908), s. 109.

I. L. R. 38 All. 188

See CIVIL PROCEDURE CODE (1908), s. 110.

I. L. R. 38 All. 488

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See LIMITATION ACT (IX OF 1908) s. 12 ;
SCH. I, ART. 179.

I. L. R. 38 All. 82

————— mode of valuation for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 110.

I. L. R. 39 Mad. 843

————— *Power of the High Court to give leave—Letters Patent, Madras, cls. 10 and 39—Disciplinary proceedings under clause 10—Right to give leave to appeal to Privy Council.* Disciplinary proceedings under clause 10 of the Letters Patent are not appealable under clause 39; and the High Court has no power to give leave to appeal to the Privy Council from an order passed in the exercise of such jurisdiction. *In re an Attorney*, I. L. R. 41 Calc. 734, followed. *G. S. D. v. Government Pleader*, I. L. R. 32 Bom. 106, and *Telley v. Jai Shankar*, I. L. R. 1 All. 726, referred to. *In re S. B. Sarbadhicary*, 34 I. A. 41, explained. *RAMACHANDRA AYYAR v. THE PRESIDENT OF THE VAKILS' ASSOCIATION, HIGH COURT, MADRAS* (1914). I. L. R. 39 Mad. 128

APPEARANCE.

See FOREIGN DECREE, EXECUTION OF

I. L. R. 39 Mad. 24

APPELLATE SIDE RULES.

R. (1) (b)—

See CRIMINAL PROCEDURE CODE (ACT V of 1908), ss. 421, 233, 537

I. L. R. 39 Mad. 527

APPLICATION.

to a wrong Court—

See INSOLVENCY, PROCEEDINGS IN

I. L. R. 39 Mad. 74

APPORTIONMENT OF RENT.

See RENT, SUIT FOR

I. L. R. 43 Calc. 554

ARBITRATION.

See ARBITRATION IN LONDON.

See CIVIL PROCEDURE CODE (1908), s. 104 (f) I. L. R. 38 All. 380

See CIVIL PROCEDURE CODE (ACT V of 1908), O XXXII, r. 7

I. L. R. 39 Mad. 853

See CIVIL PROCEDURE CODE (1908), Sch. II, cl. 17, 20 I. L. R. 33 All. 85

See CIVIL PROCEDURE CODE (1908), Sch. II, para 21, O XLIII, r. 1

I. L. R. 38 All. 297

1. — Application of parties to Court for reference of suit to arbitration—Omission of guardian of minor party to sign application—Civil Procedure Code, 1908, ss. 114, 115, 121 and O XLVII (1), Sch. II, s. 1, 15 and 16 (f) (2)—Ground for setting aside award—Reversal by Officiating Chief Commissioner on review or order of Chief Commissioner refusing revision. Finality of decree on award. Held, that Sch. II, s. 1 of the Civil Procedure Code, 1908, which provides that where the parties to a suit have agreed that the matter in difference shall be referred to arbitration they may apply in writing to the Court for an order of reference, does not require that the writing should necessarily be signed, and where the guardian ad litem of a minor party was in Court and assented

face of the award, nor any misconduct of the arbitrators or umpire, nor any concealment of facts by any of the parties which would bring the case within those provisions in Sch. II which might enable the Court to set it aside, and that the Officiating Chief Commissioner was, therefore, not justified in interfering in review with an order made by the Chief Commissioner refusing revision. UNED SINGH v. SETH SORHAJ MAL DHANDA (1915) I. L. R. 43 Calc. 230

2. — Arbitration and award by Bengal Chamber of Commerce—Jurisdiction—Broker liable as principal—Custom and usage of Calcutta Gunny Market—92, Prov. (5) Indian Evidence Act (I of 1872)—Evidence of custom or usage incidental to contract—Indian Contract Act (I of 1872), ss. 23 and 236. An award made by

ARBITRATION—*concl.*

the Bengal Chamber of Commerce was sought to be set aside by defendants in Court on the ground that the Chamber acted in excess of jurisdiction in having made the award in favour of the plaintiffs disregarding the fact that the contract in question was made by plaintiffs as brokers although in fact the plaintiffs had no principle and the contract was not therefore enforceable. The plaintiffs alleged that there was a custom in the market in respect of gunny, bazaar and manufactured jute goods by which brokers are held liable upon such contracts and such custom being well known to the Chamber, the award was properly made and valid. The Court allowed evidence of custom and usage to be given and held that there was such a custom and that the defendants knew of it. *Padmam Banerjee v. Kankarna Co., Ltd.*, 19 C W N 623, distinguished. *Held*, that ss. 230 and 236 of the Indian Contract Act, the former of which deals with undisclosed principal and the latter with falsely contracting as agent, were not applicable to this case. *Held*, also, that evidence of usage of trade applicable to the contract which the parties making it knew, or may be reasonably presumed to have known, is admissible for the purpose of importing terms into the contract, respecting which the instrument itself is silent. *Held v. Murlon*, L R 7 Q B 126, followed. That the usage being known to the Chamber the matter was within their jurisdiction and the award was properly made. *Jor Lal & Co v. Motomoti Nath Mullik* (1916) 20 C. W. N. 385

ARBITRATION ACT (IX OF 1899).

See CIVIL PROCEDURE CODE (ACT V of 1908), s. 89, O XXXII, r. 3

I. L. R. 40 Bom. 396

ARBITRATION IN LONDON.

See CONTRACT I. L. R. 43 Calc. 77

ARBITRATOR.

duties of—

See CIVIL PROCEDURE CODE (1908), s. 104 (f) I. L. R. 38 All. 380

ARMS.

purchase of—

See FOREIGN I. L. R. 43 Calc. 421

ARREST.

See PENAL CODE (ACT XLV of 1860) s. 235B I. L. R. 38 All. 506

See RESCUE FROM LAWFUL CUSTODY I. L. R. 43 Calc. 1161

order proceeding to—

See CIVIL PROCEDURE CODE (ACT V of 1908) O XLIII, r. 1(f) and O XXXIX, r. 2, cl. (2)

I. L. R. 39 Mad. 527

ASSAM LAND AND REVENUE REGULATION (I OF 1886).

s. 28, provisos 2 and 4—

See ASSESSMENT.

I. L. R. 43 Calc. 973

ss. 70, 71—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 43 Calc. 779

ASSESSMENT.

See SARANJAM I. L. R. 40 Bom. 606

penal, levy of—

See MADRAS LAND ENCROACHMENT ACT
(III OF 1905), ss. 5, 6, 7, 14.

I. L. R. 39 Mad. 727

Sovereign right—Limitation—Resumption—Right of Government to assess revenue on land alleged to be lakheraj—Divesting of such right, effect of—Bengal Regulation (II of 1805), s. 2, sub-s. (2)—Assam Regulation (I of 1886), s. 28, provisos 2 and 4—Legislation when retrospective. Though the Government's right to assess land revenue is a sovereign right and hence not subject to the Statute of Limitation under ordinary circumstances, there is nothing to prevent the Government from divesting itself of such right by making regulations for assessment and collection of revenue which might under certain circumstances give exemption from assessment of land revenue. Boddupalli Jagannadham v. The Secretary of State for India, I. L. R. 27 Mad. 16, distinguished. The effect of proviso 4 to s. 28 of the Assam Regulation (I of 1886), which is based on s. 2 of the Bengal Regulation (II of 1805), is to exempt land from assessment if the owner can prove 60 years' possession of it without payment of any revenue during that period and thus to introduce the rule of 60 years' limitation. Proviso 2 of that Regulation merely authorises assessment of lands excepted from the Permanent Settlement if they do not fall under any of the saving clauses. A statute is not retrospective simply because a part of the requisites for its action is drawn from a time antecedent to its passing. Queen v. St. Mary White-chapel, 12 Q. B. 120, followed. ANANDA KUMAR BHATTACHARJEE v. SECRETARY OF STATE FOR INDIA (1916) . . . I. L. R. 43 Calc. 973

ASSIGNEE.

from subscriber to kuri—

See SPECIFIC RELIEF ACT (I OF 1877)

s. 42. . . I. L. R. 39 Mad. 80

rights of—

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s. 4. . . I. L. R. 38 All. 474

ASSIGNMENT OF DEBT.

by holder of letters of administration—

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s. 4.

I. L. R. 38 All. 474

ATTACHING CREDITOR.

See ATTORNEY'S LIEN FOR COSTS.

I. L. R. 43 Calc. 932

withdrawal by—

See DEPOSIT IN COURT.

I. L. R. 43 Calc. 269

ATTACHMENT.

See AGRA TENANCY ACT (II OF 1901), s. 124 . . . I. L. R. 38 All. 40

See ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, RR. 46, 54.

I. L. R. 39 Mad. 389

cancelling of—

See COURT FEES ACT (VII OF 1870), SCH. II, ART. 17. I. L. R. 39 Mad. 602

for arrears of revenue—

See CONTRACT ACT (IX OF 1872), ss. 69 AND 70 . . . I. L. R. 39 Mad. 795

of property in widow's hands—

See HINDU LAW—WIDOW

I. L. R. 39 Mad. 565

ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5.

I. L. R. 39 Mad. 903

Maliciously procuring of an order for—No right of suit for damages therefor. Procuring an order for attachment before judgment, however maliciously, does not of itself afford a cause of action for damages, as damage does not necessarily and naturally flow from an application for attachment before judgment. Semble: Petitions for adjudications in bankruptcy and for winding up of companies stand on a different footing. RAMA AYYAR v GOVINDA PILLAI (1915) . . . I. L. R. 39 Mad. 952

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 59 . . . I. L. R. 38 All. 461

ATTORNEY.

See ATTORNEY'S LIEN FOR COSTS.

1. *Admission by attorney if binds client. An admission by an attorney, unless satisfactorily explained away, furnishes cogent evidence against the client. KETOKEY CHURAN BANERJEE v. SARAT KUMAR DASS (1916) . . . 20 C. W. N. 995*

2. *Application by attorney for discharge—Notice to client, sufficiency of. If an attorney wishes to withdraw from a case even for good grounds, he must give his client reasonable notice of his intention so that the client may have a reasonable opportunity of getting other advice and making arrangements before the hearing of the application of the attorney for obtaining his discharge. When an attorney gave notice to the client on the day previous to his making application before Court for obtaining his*

ATTORNEY—concl'd

discharge and obtained the order. *Held*, on appeal, that the order must be set aside for insufficiency of notice. **PRADHU LAL v. KUMAR KUSHNA DATT** (1916) 20 C. W. N. 443

3. Attorney discharge
ing himself, if any detain clients' papers pending suit—Even in such case how secured—When discharged by client, except for misconduct, if any detain papers Sanderson, C. J. (Woodroffe J. agreeing) Where an attorney, who had been acting for his client in the ordinary way, refused to go on acting for him unless his out-of-pocket expenses were paid, that amounted to a discharge of the attorney by himself and he could not claim to retain the papers when they were wanted by his former client for continuing the litigation. He would, at most, be entitled to have his lien protected by an undertaking by the new attorney. The same rule would apply where it was part of the original retainer of the solicitor that he should only be bound to act as long as the money should be supplied from time to time.

Joe, J. If a solicitor is discharged by his clients otherwise than for misconduct, he cannot so long as

be treated as finally discharged till the leave of the Court had been obtained. Atul Chandra Ghosh v Lakshman Chandra Sen, 1 L R 36 Cile 609. Prabhu Lal v Kishan Kishnu Dutt (1916) 29 C. W. N. 437

ATTORNEY'S LIEN FOR COSTS.

execution of a decree obtained by a third party, and the attorney for the plaintiff claimed a lien for costs on such decree. *Hill*, that the defendants' application to set it off was proper but that it was was not bill the claimed *Flakey* *Lergals* *managan Seltz v. Hurry Bros. Mag. I L.R. 116* *Cole* *371, Colbaugh Samply v. Bagshawer* *Wypal G* *Leon L.R. 872, and 1 Goodfellow v. Bray, [1899]* *2 Q.B. 489* referred to. *BRUPENDRA NATH* *Bhaskar E. D. Sengoo & Co. (1910)*

AUCTION SALE.

SIE BESAMT FÜRCHSTER.

L. L. R. 43 Calc. 20

AWARD.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 52, O XVIII, R. 3

L. L. R. 40 Bom. 356

application to file

See CIVIL PROCEDURE CODE (1908), s
104 (1) L. L. R. 28 All. 380

AWARD-DECREE

_____ validity of—

See CIVIL PROCEDURE CODE (ACT 1 OF 1908) O XXVII R 7

L. L. B. 39 Mad. 853

B

BAILABLE OFFENCE.

Magistrate—Report to the police—Institution of com-
plaint, and if the police charge the case, it is
gives information to the police just as effectively as
if he went in person to the police station and made
a complaint, and if the police charge the case, it is

L. L. R. 39 Mad. 1005

BAILOR AND BAILEE.

See PARTNERSHIP L.L.R. 43 Cal. 733

BALANCE OF MORTGAGE-MONEY.

knit for—

See SPECIFIC PERFORMANCE.
L. L. R. 43 Cal. 59

BANDHU.

See HINDU LAW—SUCCESSION
L. L. R. 38 All 418

BARODA-COURT DECREE

See **DICKLE** L. L. R. 40 Bom. 505

BELCHAMBERS' RULES AND ORDERS.

_____ R. 370

See REYNOLDS L. L. R. 43 Cal. 903

BENAMI PURCHASE.

See DEKKHAN AGRICULTURISTS' RELIEF
Act (VII of 1789)

BEYAMI PURCHASER

Procedure Code (tit 1 of 1905) a 68—Object of the section, 2, 10 of the Code of Civil Procedure, 1904

BENAMI PURCHASER—concl'd.

lays down that no suit shall be maintained against any person claiming title under a purchase certified by the Court, on the ground that the purchase was made on behalf of the plaintiff or some one through whom the plaintiff claims. The section is clearly aimed at *benami* purchases at execution sales. The clear intention of the section is to stop *benami* purchases by making it impossible for the real owner to question the *benamidar's* title. *Bhisham Dhol v. Ghazi-ud-din*, 1. L. R. 23 All. 175, referred to. *Sadi Churn Niandi v. Annoparna*, 1. L. R. 23 Cal. 699, doubted. HANUMAN PRESHAD THAKUR v. JADU NANDAN THAKUR (1915)

I. L. R. 43 Cal. 20

BENAMI TRANSACTION.

See SECOND APPEAL

I. L. R. 38 All. 122

BENAMIDAR.

Partition—Joint immovable property, suit for partition of. A *benamidar* cannot maintain a suit for partition of joint immovable property. *Basi Poddar v. Ram Krishna*, 1 C. W. N., 135, *Baburam v. Ram Sahai*, 8 C. L. J. 395, *Sreenath Nag v. Chundernath Ghose*, 17 W. R. 192, *Bhobunessur Roy v. Juggessur*, 22 W. R. 113, *Sachitananda v. Balaram*, 1. L. R. 21 Cal. 611, *Hara Gobinda Saha v. Purna Chandra Saha*, 11 C. L. J. 17, *Alikjan Bibi v. Rambaran*, 12 C. L. J. 357, *Kirtibas v. Gopal Jiu*, 19 C. L. J. 193, *Meheroonissa v. Har Churn*, 10 W. R. 229, *Fuzelun v. Omdah*, 11 B. L. R. 60 note, *Kally Prosonno v. Dinonath*, 1 B. L. R. 55, *Tamoonissa v. Wooljilmonee*, 20 W. R. 72, *Hari Gobind Adhikari v. Akhoy Kumar*, 1. L. R. 16 Cal. 364, *Issur Chandra v. Gopal Chandra*, 1. L. R. 25 Cal. 98, *Buroda v. Dino Bandhu*, 1. L. R. 25 Cal. 871, *Mohendra Nath Mukerjee v. Kali Proshad Johuri*, 1. L. R. 30 Cal. 265, *Kuthaperumal v. Secretary of State*, 1. L. R. 30 Mad. 215; *Venkatachala v. Subramania*, 8 Mad. Law Times 377, *Danlu v. Balvant*, 1. L. R. 22 Bom. 820, *Rarji v. Mahader*, 1. L. R. 22 Bom. 672, *Nand Kishore Lall v. Ahmed Ata*, 1. L. R. 18 All. 69, *Yad Ram v. Unruao Singh*, 1. L. R. 21 All. 380, *Donzelle v. Kedarnath*, 7 B. L. R. 720; 16 W. R. 186, *Kedarnath v. Donzell*, 20 W. R. 352, *Indurbuttee v. Mahboob*, 21 W. R. 41, *Joynarain v. Kadambini*, 7 B. L. R. 723 note, *Purnia v. Torab*, 3 Wyman's Rep. 36, *Bogar v. Karan Singh*, 2 P. W. R. 26, *Basiruddin v. Mahomed*, 12 C. W. N. 409, *Ram Bhurosee v. Bissesser*, 18 W. R. 154, *Sita Nath v. Nobin Chunder*, 5 C. L. R. 102, *Gopi Nath v. Bhugwat Pershad*, 1. L. R. 10 Cal. 697, and *Bhola Pershad v. Ram Lall*, 1. L. R. 24 Cal. 34, referred to. ATRABANNESSA BIBI. v. SAFATULLAH MIA, (1915)

I. L. R. 43 Cal. 504

BENGAL ACTS.

1870—VI.

See CHAUKIDARI CHAKRAN LANDS ACT.

1879—IX.

See COURT OF WARDS ACT, BENGAL.

BENGAL ACTS—concl'd.

1884—III.

See BENGAL MUNICIPAL ACT.

1897—V.

See ESTATES PARTITION ACT, BENGAL.

1908—VI.

See CHOTA NAGPUR TENANCY ACT.

1911—V.

See CALCUTTA IMPROVEMENT ACT.

BENGAL CHAMBER OF COMMERCE.

arbitration by—

See ARBITRATION . 20 C. W. N. 365

BENGAL DISTRICT GAZETTEER.

reference to—

See SIMANADAMS I. L. R. 43 Cal. 227

BENGAL MUNICIPAL ACT (BENG. III OF 1884).

ss. 30, 31—

See MUNICIPALITY

I. L. R. 43 Cal. 130

ss. 44, 45, 271, 230, 353—Order or consent of Commissioners necessary for prosecution under the Act—Power of Chairman to give such order or consent on behalf of the Commissioners—Vice-Chairman, exercise by, of powers of Chairman—Consent of Chairman subsequently obtained, validating effect of. The accused was prosecuted under s. 271 of the Bengal Municipal Act for disobeying a requisition under s. 230. The report of the offence was made by the Outdoor Inspector, and it was submitted to the District Magistrate by the Chairman with a recommendation to prosecute the accused. The Inspector appeared before the Magistrate and was examined as the complainant. The document which was submitted by the Chairman to the Magistrate bore an eight-anna stamp. It further appeared that the notice against the accused was issued on the authority of the Vice-Chairman. There was no written order of delegation of duties or powers by the Chairman to the Vice-Chairman which could cover this order made by the Vice-Chairman. Held, that because the report of the offence made by the Inspector which was submitted by the Chairman to the District Magistrate bore an eight-anna stamp, it did not follow that it must be regarded as a petition of complaint and that the Chairman was merely in the position of a complainant. That the order or consent of the Commissioners necessary under s. 353 for the institution of a prosecution under the Act is an order or consent by the Chairman as representing the Commissioners which the Chairman can give under s. 44. That in the present case the order of the Chairman was an order or consent in writing by the Chairman within the meaning of s. 353 and was sufficient. That it being clear that the act of the Vice-Chairman was done with the express consent of the Chairman subsequently obtained, the case was covered by the

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—concl'd

ss. 44, 45—concl'd.

PROVISO to s. 45 CHAIRMAN of HUGLI CHINSURA MUNICIPALITY v KRISTO LAL MULLICK (1916)

20 C. W. N. 824

s. 345—It is necessary for a conviction under s. 345 of the Bengal Municipal Act to prove that the Magistrate on the application of the Commissioners had ordered the land to be closed as a market place and had taken order to prevent such land being so used PUTI KADARIN v VICE CHAIRMAN, BENHAMPUR MUNICIPALITY (1916)

20 C. W. N. 1015

BENGAL REGULATIONS.

1805—II.

s. 2 (2)—

See ASSESSMENT I. L. R. 43 Calc. 973

1829—X.

See LANDRECK I. L. R. 38 All. 494

BENGAL TENANCY ACT (VIII OF 1885)

s. 1.—Land in suburb of Calcutta let out in 1898 for 5 years—Lessee holding on till sued in execution in 1910—Status of lessee, non occupancy riyat.—Town of Calcutta, extension of, by amendment—Limitation—Bengal Tenancy Act, Sch. III, Art. I (a) Defendant on 16th December 1898 took a five years' lease from plaintiff of an agricultural building situated within the present Municipal limits of Calcutta but beyond the limits of the town of Calcutta as determined by the proclamation of the Government in Council dated the 10th September 1794, issued under s. 159 of statute 33, Geo. III, c. 52. Plaintiff on 9th November 1910 having sued to eject the defendant Held, that until the Bengal Tenancy Amendment Act of 1907 came into force, the Bengal Tenancy Act applied to the case and defendant had in consequence acquired the status of a non-occupancy riyat when the Amendment Act came into force, and thus status was not affected by the provisions of s. 3 of the Amendment Act which gave a new definition of the expression "town of Calcutta" as used in s. 1 of the Bengal Tenancy Act, making it too extensive in area with the present municipal limits of Calcutta. The explanation added to sub s. (5) of s. 1 of the Bengal Tenancy Act by s. 3 of Act I, B. C. of 1907 is an amending statute and not merely one of a declaratory character and cannot therefore be given retroactive operation. Held, that the suit was barred by Art. I (a) to Sch. III of the Bengal Tenancy Act JOTHAM HUISS v JOWAK NATH GHOSH (1914)

20 C. W. N. 253

ss. 8, 7—Part, enhancement of—Part of tenure created before Permanent Settlement but separated by assignment and held at a portion of rent by assignee—Confirmation of rent of created by tenure When a part of a tenure existing at the date of the Permanent Settlement was separated subject to confirmation by the landlord, a rent granted by the landlord in favour of the assignee confirming

BENGAL TENANCY ACT (VIII OF 1885)—cont'd

ss. 8, 7—concl'd.

the transfer and allowing the assignee to hold his purchased share on payment of a proportionate share of the original rent did not create a new tenure, and the rent payable was not liable to enhancement except in the circumstances specified in clauses (a) and (b) to sec. 6 of the Bengal Tenancy Act MOOKJEE J It is well settled that the continuity of transferable tenure is not affected by subdivision or by consolidation. UDOJ CHANDRA KARYA v Narendran Varayan Bhup, I L R 26 Calc 287 s c 13 C W N 410, commented on CHANDRA KANTA CHAKRABARTI v RAM KHEUN MAHALANABISH (1910)

20 C. W. N. 1002

s. 12—Amending Act I, B. C. of 1905—

Portion of tenure, sale of, by registered instrument—Non payment of landlord's fee—Title, if passes—Purchaser allowing order to represent him to land lord—Effect on rent sale The transfer of a portion of a tenure was complete upon registration although the landlord's fee was not paid and no notice of the transfer was given to him KRISTO BULLAY GHOSH v KRISTO LAL SINGH I L R 16 Calc 612, Chintanoni Dutt v Rash Behary Mondal I L R 12 Calc 17, Hemendra Nath Mukerjee v Kumar Nath Poy 12 C W N 474 and Girish Chandra Ghosh v Khogendra Nath Chatterjee 16 C W N 64 relied on But where the purchaser subsequent to his purchase allowed his vendor to represent him before the landlord paying rent in the latter's name, the landlord was entitled to frame his suit for rent with out impleading the purchaser, and the sale in execution of the decree obtained therein passed the entire tenure ALI MAHAMED v AY TANTODIN BURJA (1915)

20 C. W. N. 355

s. 22—Thila taken by a cultivating riyat—Conversion into tenure holder—Merg—Liability to eviction after expiry of period of thila—Conversion of lease A thiladar is liable to eviction after the expiry of the period of his lease, even though it is found that he was a cultivating riyat with respect to the lands of which he took the thila prior to it. His interests as a riyat became merged into the rights he acquired under the lease MAY KELS v SATTAR HAN DAS (1916)

20 C. W. N. 800

ss. 22 (2), 49, 85, 167—

See LANDLORD AND TENANT

I. L. R. 43 Calc. 164

s. 33, cl. (1), (a)—Permanent detentor alien relates The word 'permanent' in s. 34 of the Bengal Tenancy Act must in every case be construed with reference to existing conditions and when a piece of land gets covered with an title declaration is permanent with reference to existing conditions. Govra Patra v H R Poy, I. L. R. 20 Calc 379, 356 All. wcl KRISHNA BANAY v PALAKHARI ROY (1915)

20 C. W. N. 1137

ss. 49, 85—Ordering a lease for a term under assignment, if the land is not assigned

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

— ss. 49, 85—*concl'd.*

within term. A sub-lease granted by a raiyat for a term not exceeding nine years carries with it the ordinary incidents of a lease for a term of years—one of such incidents being that if the lessee dies before the end of the term, his heirs are entitled to succeed him in the tenancy. *Midnapore Zamindari Company v. Hrishikesh Ghose*, 1 L. R. 41 Calc. 1108 s. c. 18 C. W. N. 828, *Arip Mondal v. Ram Ratun Mondal*, 1 L. R. 31 Calc. 757 : s. c. 8 C. W. N. 479, and *Jamini Sundari Dasi v. Rajendra Nath Chakraborty*, 11 C. W. N. 519, referred to. *ABJAN BIBI v. RAHAM ALI* (1915)

20 C. W. N. 756

— s. 85—*Under-raiyati lease for 9 years with covenant of renewal, if valid—Ejectment, suit for, at termination of term.* Notwithstanding the provisions of s. 85 of the Bengal Tenancy Act, a stipulation in a lease granted by a raiyat to an under-raiyat that after the expiry of the nine years for which the lease was granted, the raiyat would grant the under-raiyat a fresh lease of the land is valid. *Ali Mahomed v. Nayan Rajah*, 15 C. L. J. 122, followed. *Abdul Karim v. Abdul Rahaman*, 15 C. L. J. 672, s. c. 16 C. W. N. 618, referred to. When there is a covenant for renewal if the option does not state the terms of the renewal the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself. If it is possible to interpret an agreement between the parties so as to make it operative, effect should be given to it and the contract should not be pronounced unenforceable : *Held*, that the only reasonable interpretation of the covenant in this case was that the parties agreed that the lease would be renewed on the same terms and for the same period as the original lease. *LANI MIA v. MUHAMMAD EASIN MEA* (1915).

20 C. W. N. 948

s. 85 (2)—

1. — *If excludes operation of rules of equity in the relation of landlord and tenant.* The Bengal Tenancy Act is not a complete Code, even in respect of the law of landlord and tenant ; much less does it profess to incorporate the general principles of the law of contract and the doctrines of equity jurisprudence in so far as they may have to be applied in the determination of disputes between landlords and tenants. *BAMANDAS BHATTACHARYYA v. NILMADHAB SAHA* (1916)

20 C. W. N. 1340

2. — *Under-raiyati lease for a term exceeding 9 years, if void—Objection by trespasser—Oral evidence and admission by the raiyat, if admissible to prove tenancy—Prior possession as tenant—Putra-poutradikramay, meaning of.* Where an under-raiyat by virtue of a registered sub-lease created in his favour by a raiyat for a term described as “putra-poutradikramay” sued the defendants for ejectment on the ground that they were trespassers and he also sought to prove

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

s. 85 (2)—*concl'd.*

his tenancy, irrespective of the lease, by an admission of the raiyat that he granted the lease to the plaintiff and took *selami* from him and that plaintiff obtained possession of the remainder of the land covered by the lease : *Held*, that plaintiff's lease was for a term exceeding 9 years and as such it was not admissible in evidence and did not create any title in the plaintiff. *Jurip Khan v. Dorfu Bewa*, 17 C. W. N. 59, followed. *Held*, that the admission of the raiyat, being evidence relating to the transaction of the lease in respect of which there was a document, was not admissible in evidence and possession by plaintiff of other land covered by the lease, even if proved, was not sufficient to prove plaintiff's tenancy in the land in suit. *Held*, further, that having regard to the expression “putra-poutradikramay” the *patta* granted to the plaintiff was perpetual lease. *KARTICK MANDAL v. BAMA CHARAN MANDAL* (1915)

20 C. W. N. 182

ss. 85, 159, 161—

See APPEAL . I. L. R. 43 Calc. 178

s. 93—

See COMMON MANAGER .

I. L. R. 43 Calc. 986

s. 102—*Its amendment in 1898—Effect of s. 102—Settlement Officer, power of.* S. 102 of the Bengal Tenancy Act has now been amended by the insertion of a new clause which expressly authorises the Settlement Officer to decide when the land is claimed to be held rent-free—whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled under what authority. The very circumstance that the Legislature has inserted this clause in s. 102 points to the conclusion that the matter provided for thereunder is not covered by the other clause of s. 102. The Legislature could not possibly have intended to accord finality to a decision of a dispute by a Settlement Officer which it was beyond the jurisdiction of the Revenue Officer to decide under s. 106 of the Bengal Tenancy Act. *Radha Kishore v. Durganath*, 1 L. R. 32 Calc. 162, *Donay Dass v. Keshub Pruhti*, 8 C. W. N. 741, *Nabin Chandra v. Radha Kishore*, 11 C. W. N. 859, *Nikunja Behary v. Radha Kishore*, 22 C. L. J. 148, *Secretary of State for India v. Nitye Singh*, 1 L. R. 21 Calc. 38, *Dharani Kanta Lahiri v. Gaber Ali Khan*, 1 L. R. 30 Calc. 339, *Karmi Khan v. Brojo Nath Das*, 1 L. R. 22 Calc. 244, and *Birendra v. Bhoirab*, 20 C. L. J. 295, referred to. *BIRENDRA KISHORE MANIKYA v. KALITARA DEBI* (1915) I. L. R. 43 Calc. 547

ss. 105A (4), 106, 109A.—

See SECOND APPEAL

I. L. R. 43 Calc. 603

s. 120 (2) (a)—*Land let out to tenant claimed as zerai—Tenant's admission in kabuliya if admissible.* The new sub-s. (2) (a), to s. 120 which shows that “any other evidence that may

BENGOAL TENANCY ACT (VIII OF 1885)—*contd.*s. 120—*contd.*

on the ground that it was not included in the expression "any other evidence that may be produced" but for the reason that when the Legislature expressly made evidence of letting before the 2nd March 1883 admissible in proof of the character of the land, they must be intended to exclude evidence of letting after the 2nd March 1883. Where therefore the only evidence to prove that land let out for a term of seven years expiring on 4th June 1909 was a rental to the effect in the *Lubuhyal*, dated the 19th September 1902. *Held*, that this rental was an evidence of the alleged serial character of the land. *Nilmoney Chakrabarty v. Bykanti Nath Bera*, 1 L. R. 17 Cal. 466, *Apudhya Prasad v. Rani Gulam*, 13 C. W. N. 661, *Bhagtu Singh v. Rughunath*, 13 C. W. N. 991 s. c. 3 C. L. J. 15, and *Masoodin Singh v. Goolat Nath Pandey*, 1 C. L. J. 456, referred to. *GANPAT MAHTON v. RISHAL SINGH* (1914). 20 C. W. N. 14

s. 153—

1. — *Question of title raised but not decided by Munsif exercising final Jurisdiction—Appeal to District Judge, if *hac*—District Judge deciding question of title in appeal—second appeal, if *hac*.* In a suit to recover arrears of rent (the amount in claim being less than Rs. 50) the defendant objected that the Plaintiff was his *tanamdar*. The Munsif, who had final jurisdiction under s. 153 of the Bengal Tenancy Act, declined to go into the question of title but dismissed the suit on the ground that the plaintiff had failed to prove realisation of rent from the defendant in previous years. The plaintiff appealed to the District Judge and also preferred an application for revision under the proviso to s. 153. The District Judge overruled the defendant's objection in the appeal that no appeal lay under s. 153, and found for the plaintiff on the merits. *Held*, that no appeal lay to the District Judge from the decision of the Munsif as no question of conflicting title was decided by it, and the decision of the District Judge to the contrary was erroneous in law. That a second appeal lay against this decision. *Kalipati v. Shikhar Linnu*, 23 C. L. J. 235, overruled. *Held*, per Sanderson C. J. That an appeal lay from the decision of the District Judge, which decided a

appeal against the order cannot be defeated on the ground that the order was made without jurisdiction. *Abdullah Bhowar Nauda Kumar Chatterjee*, 12 C. W. N. 935, *Abdul Hossain v. Kashi Nath*, 1 L. R. 27 Cal. 362, *Mechalski Nauda v.*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*s. 153—*contd.*

Subramanyya Sastri, 1 L. R. 111, A. 169, and *Rajni Misser v. Ramdhar Singh*, 16 C. L. J. 77, discussed. The Court directed the District Judge to deal with the application for revision under the proviso to s. 153 of the Bengal Tenancy Act. *GANGADHAR KARMAR v. SUEKHAR BASNI DASIA* (1916)

20 C. W. N. 987

2. — *Rent not valued*

ing claims thereto—Concurrent findings of fact of Courts below, dismissal of appeal for. Where the plaintiff brings a suit for rent the value of which is less than Rs. 100 against the defendants claiming that she is a rayat of the land and that the defendants are her under rayats and liable to pay rent to her and the defendants deny that they are under rayats under the plaintiff but plead that their father had purchased the land from the heir of the admitted previous rayat of the land and that they had been holding the land as the rayat of the landlord, and both the Courts below found that the plaintiff was in possession for a large number of years and that the defendants failed to prove that they ever held the land as rayat of the landlord; *Held*, that a second appeal was not barred under s. 153 of the Bengal Tenancy Act, as the Courts below decided a question of title to land between parties having conflicting claims thereto. The appeal was dismissed, there being concurrent findings of fact of the Courts below. *Banta v. Saha*, (1910)

20 C. W. N. 1352

3. — *Second Appeal, whether his Tenant claiming *mog*, as *jeth rayat*—Meanings of *jeth rayat* and *mog*.* Where in a rent suit valued at less than Rs. 100, the tenant claimed Rs. 3500 as *mog* on the whole rent on the ground that he was a *jeth rayat* and the District Judge allowed the *mog* in the landlord preferred a second appeal. *Held*, that no second appeal lies under s. 153 of the Bengal Tenancy Act, as it does not involve a question of the amount of rent annually payable by the tenant. *Jeth rayats* have to perform certain duties under the land *ul*, as for example, calling tenants for the collection of rent and such similar duties and for that they are allowed by the landlord, by way of wages and instead of payment in cash, a *mog* from the total rent instead of payment in cash. *Mog* is not rent because it is a sum of money payable by the landlord to the tenant, whereas rent is money payable by the tenant to the landlord and *mog* is a set-off against the rent. *SARAT HOSSAIN v. WALI BHOW* (1916)

20 C. W. N. 1297

s. 159, 163 to 167—

See *SALA*. 1 L. R. 43 Cal. 263

s. 161, 167—

See *INDREBANAN* 1 L. R. 43 Cal. 353

BENGAL TENANCY ACT (VIII OF 1885)—contd.

s. 170 (3)—Occupancy-holding, purchaser of, if may deposit, when holding put up to sale in execution of rent-decree against his vendor—"Interest voidable on the sale." An unregistered purchaser of a non-transferable occupancy-holding is entitled to make a deposit under s. 170 (3) of the Bengal Tenancy Act when the holding has been advertised for sale in execution of a rent-decree obtained subsequently to his purchase by the landlord against the registered tenant—and this even though he has been in possession of the holding for less than twelve years. *Tarak Das Pal v. Harish Chandra Banerjee*, 17 C. W. N. 163 : s. c. 16 C. L. J. 518, and *Dayamayi v. Ananda Mohan Roy*, 18 C. W. N. 971, referred to. He has an interest in the holding which is voidable on the sale. *ANAMADULLA CHOWDURY v. PRAYAG SAHU* (1914)

20 C. W. N. 39

s. 174—

See DEPOSIT IN COURT.

I. L. R. 43 Calc. 100

s. 182—

See OCCUPANCY RIGHT.

I. L. R. 43 Calc. 195

Homestead land, if means land capable of being used but not actually used as homestead—Homestead land if must be held by raiyat of same village and under same landlord—Agricultural purpose, storage of corn if. There is nothing in the language of s. 182 of the Bengal Tenancy Act to justify its restriction to cases where the homestead and the holding are situated in one village and are held under one landlord. The section is not applicable where it is established that the land is not used by the raiyat as his homestead, and it is not sufficient for the raiyat to show that the character of the land is such as would justify its use as a homestead. The provisions of the Bengal Tenancy Act are applicable to all lands used for agricultural purposes and are not restricted to such lands alone as are actually under cultivation. Land taken with a view to gather and store thereon crops raised in adjacent lands actually cultivated by the raiyat is land used for agricultural purposes. *DINA NATH NAG v. SASI MOHON DEY TARAFDAR* (1915)

20 C. W. N. 550

Sch. III, Art. 1 (a)—

1. —Khas Khamar land held by tenant under lease for term—Suit for khas possession brought more than six months after expiration of lease—Limitation—Heading of Chapter if may be looked at for construing sections. The plaintiffs sued for khas possession of land held by the defendants under a lease for five years on the ground that they were entitled to re-entry at the expiration of the agreement. It was found that the defendants were not in possession of the land before they entered it under their lease and that the land in suit was khas khamar. The suit was brought more than six months after the expiration of the lease : *Held*, that the defendants were not included in the term "non-occupancy raiyat"

BENGAL TENANCY ACT (VIII OF 1885)—contd.**Sch. III, Art. 1—concl'd.**

within cl. 1 (a), Sch. 3 of the Bengal Tenancy Act and the suit was not barred. That the Court could look at the heading of Chap. XI of the Bengal Tenancy Act for the purpose of construing the sections. *DWARKA NATH CHOWDHURI v. TAFAZAR RAHMAN SARKAR* (1916)

20 C. W. N. 1097

2. —Zerail land—Suit for ejectment—Limitation. A suit to eject a raiyat of zerail land brought more than six months after the expiry of the term of his lease is barred by Art. (1), (a), of Sch. III of the Bengal Tenancy Act, s. 45 of the Act which was not applicable to zerail lands under s. 116 having been replaced by the said article which is applicable. *GANPAT MAHTON v. RISHAL SINGH* (1914)

20 C. W. N. 14

Sch. III, Art. 2—Limitation—Agricultural purpose if necessary for lease to come under the Tenancy Act—Transfer of Property Act (IV of 1882), s. 117. The plaintiff sued to recover arrears of rent due under two *kabuliats* given in respect of agricultural lands leased to the defendant. The leases were *mustagiri* leases and contained the provision that "the *mustagir* shall enjoy the *parti* land which may be converted into culturable land in the *jamabandi* of the mauza which may be increased till the term of the settlement." *Held*, per FLETCHER, J. That one of the purposes for which the leases were granted was to authorise the defendant to bring under cultivation the waste land which is obviously an agricultural purpose and the period of limitation applicable to the suit was that provided under Art. 2 of Sch. III, Bengal Tenancy Act. That even if the leases were held not to be for agricultural purposes they were governed by the Bengal Tenancy Act for the purposes of limitation. *Burnamoyi Dassi v. Burnamoyi Choudhrani*, I. L. R. 23 Calc. 191. *Per* RICHARDSON J. Whether the leases which were temporary leases relating to agricultural lands granted to a rent farmer, were or were not leases for agricultural purposes, the Bengal Tenancy Act applied and the period of limitation applicable was that provided by that Act. That in view of the cases, *Durga Prosad v. Brindaban*, I. L. R. 19 Calc. 504, *Peary Mohun v. Sreeram Chandra*, 6 C. W. N. 794, and *Burnamoyi Dassi v. Burnamoyi Choudhrani*, I. L. R. 23 Calc. 191, and of the terms of s. 117 of the Transfer of Property Act, it does not follow that because a lease (of agricultural land) is not a lease for agricultural purposes it is subject only to the Transfer of Property Act and is not governed in any respect by the Bengal Tenancy Act. *Per* FLETCHER J. Although a *mustagiri* lease is sometimes and perhaps usually a lease to a middleman yet in Bihar the term is applied frequently to temporary leases instead of the word *thika*. *RASH BEHARI LAL MUNDER v. TILUKDHARI LALL* (1915)

20 C. W. N. 485

Sch. III, Art. 3—Legitimate purpose and scope of—Governs relations of landlord and tenant only—Special limitation—Dispossession.

BENGAL TENANCY ACT (VIII OF 1885)—*concl'd.***Sch. III, Art. 3—*concl'd.***

sufficient to deprive tenant of right of suit.
In determining what Art. 3 of Sch. III of

a tenant of the rights that he otherwise possesses against a third person between whom and himself there was no relationship of landlord and tenant. It was only intended to deal with such rights as existed between landlord and tenant. To deprive a tenant of his right of suit there must be a plain dispossession within the meaning of Art. 3 of the Schedule. *KRISHNA CHANDRA BAGDI v SATISH CHANDRA BANERJI* (1915) . 20 C. W. N. 872

BEQUEST.**conditional—**

See **HINDU LAW—WILL.**

L. L. R. 38 All. 440

to a person not named in the will—

See **WILL** . L. L. R. 40 Bom. 1

to different legatees—

See **HINDU LAW—WILL.**

L. L. R. 33 All. 440

BHAGDARI AND NARVADARI ACT (DOM. V OF 1902).

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**, s. 11 . L. L. R. 40 Bom. 614

s. 3—

See **LAND ACQUISITION ACT (I OF 1894)**, s. 32 . L. L. R. 40 Bom. 254

s. 3—Will—whether devise by will

JUTHAI v. HARIDHAI HANSSI (1915)

L. L. R. 40 Bom. 207

BILL OF LADING.

See **CONTRACT ACT (IX OF 1872)**, s. 50

L. L. R. 40 Bom. 301

See **CONTRACT ACT (IX OF 1872)**, ss. 56, 65

L. L. R. 40 Bom. 329

See **SALE OF GOODS**

L. L. R. 40 Bom. 11

BOMBAY ACTS.

1602—V.

See **BHAGDARI ACT**

1874—III.

See **BOMBAY HEREDITARY OFFICES ACT**

1879—V.

See **LAND REVENUE CODE, BOMBAY**

BOMBAY ACTS—*concl'd.*

1879—XVII.

See **DEKKHAN AGRICULTURISTS' RELIEF ACT**

1880—L.

See **KHORI SETTLEMENT ACT**

1887—IV.

See **BOMBAY PREVENTION OF GAMBLING ACT.**

1901—III.

See **BOMBAY DISTRICT MUNICIPALITIES ACT.**

1903—IV.

See **RECORD OF RIGHTS ACT, BOMBAY.**

1905—L.

See **COURT OF WARDS ACT, BOMBAY.**

BOMBAY COTTON TRADE ASSOCIATION RULES.

See **CONTRACT ACT (IX OF 1872)**, s. 47

L. L. R. 40 Bom. 517

BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).

s. 42—Liability of Councillors for misapplied funds—Misapplication by Secretary and accounts clerk of the Municipality—Misapplication, interpretation of—Suit by the Secretary of State for India in Council. The Secretary of State for India in Council sued to recover a sum of money from the defendants, the first two of whom were the Secretary and accounts clerk of a Municipality, the rest being the Councillors thereof. The sum claimed was the Municipal money embezzled by defendants Nos. 1 and 2. The liability of the remaining defendants (defendants Nos. 3 to 12) was based upon s. 42 of the Bombay District Municipalities Act (Bombay Act III of 1901). Defendants Nos. 3 to 12 contended that s. 42 was not applicable inasmuch as the embezzlements by the paid servants of the Municipality would not amount to misapplication of the Municipal funds within the meaning of the section. The lower Court overruled the contention and decreed the suit. The defendants Nos. 3 to 12 having appealed to the High Court. Held, confirming the decree, that the operation of s. 42 of the Bombay District Municipalities Act (Bombay Act III of 1901) was not restricted to misapplications made by any Councillor or Councillors, but it applies to any misapplication by whomsoever made. *PER BARNESON J.* The context in which the word 'misapplication' occurs indicates that the word is employed rather in the broad and popular sense than in the narrow or etymological sense. There is no requirement that the misapplication must be by the Councillors themselves or by any specified persons whatsoever, and the use of the passive word 'happened' seems to suggest also that the scope of the section extends to a misapplication of the Municipal funds by a Municipal employee.

BOMBAY DISTRICT MUNICIPALITIES ACT
(BOM. III OF 1901)—*concl'd.*s. 42—*concl'd.*

provided only that the misappropriation was facilitated by the Councillors' gross neglect of their duties." *Per* HAYWARD, J. "Any diversion of funds however caused from their proper purposes would be covered by the wide term 'misapplication' and it is in that wide sense that the term has been introduced into s. 42 of the Act. It has purposely not been restricted to a 'misapplication' to which a Councillor shall have been a party, but has been applied expressly to a 'misapplication' which shall have happened through or been facilitated by gross neglect of duty by a Councillor, that is to say, which has happened by any other agency through the gross neglect of a Councillor." *MANILAL GANGADAS v. SECRETARY OF STATE FOR INDIA* (1915) . . . I. L. R. 40 Bom. 166

s. 160—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 I. L. R. 40 Bom. 509

BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874).

ss. 25, 36—

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), ss. 25, 36.

I. L. R. 40 Bom. 55

Suit for a declaration—

Declaration that plaintiff is the nearest heir of a deceased representative Vatandar—Watan—Civil Court—Jurisdiction. A suit for a declaration that the plaintiff is the nearest heir of a deceased representative Vatandar is within the jurisdiction of a Civil Court although a declaration that the plaintiff is entitled to have his name entered in Vatan Register is a matter beyond the jurisdiction of the Court. *Rahimkhan v. Dadamiya*, I. L. R. 34 Bom. 101, followed. *SHANKAR BABAJI v. DATTATRAYA BHIWAJI* (1915) . . . I. L. R. 40 Bom. 55

BOMBAY PREVENTION OF GAMBLING ACT
(BOM. IV OF 1887).

s. 3—*Instruments of gaming—Book used for recording bets already made is an instrument of gaming.* A book which is used for recording entries of the bets made by persons frequenting a place, is an instrument of gaming, within the definition of that term in s. 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887). *Emperor v. Lakhamai*, I. L. R. 29 Bom. 264, followed. *EMPEROR v. MANILAL MANGALJI* (1915) . . . I. L. R. 40 Bom. 263

BOMBAY REGULATION (II OF 1827).

s. 5—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 I. L. R. 40 Bom. 86

BOMBAY REGULATION (IV OF 1827).

cl. 26—

See PRE-EMPTION I. L. R. 40 Bom. 358

BONA FIDE CLAIM.*See* CRIMINAL TRESPASS.

I. L. R. 43 Calc. 1143

BONA FIDES.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s. 57

I. L. R. 39 Mad. 250

want of—

See DEPOSIT IN COURT.

I. L. R. 43 Calc. 269

BOND.*See* JOINT BOND I. L. R. 39 Mad. 409**BOUNDARIES ACT (XXVIII OF 1860).**

ss. 24, 25—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11. I. L. R. 39 Mad. 1202

BOUNDARY SETTLEMENT OFFICER.

decision of a—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11. I. L. R. 39 Mad. 1202

BREACH OF CONTRACT.*See* DAMAGES . I. L. R. 43 Calc. 493**BREACH OF TRUST.***See* TRUSTEE. I. L. R. 39 Mad. 115**BRITISH COURT.***See* FOREIGN DECREE

I. L. R. 40 Bom. 551

BROKERAGE CONTRACT.

terminable by parties by three months' notice before the end of the term—Under-broker who had notice of brokerage contract, if, may claim damages for whole term when brokerage contract legally terminated before expiry of term—Under-broker wrongfully dismissed before brokerage contract terminated—Damages, measure of—Brokerage contract, if terminable by fresh agreement—Under-broker, if may insist on termination by notice—Hindu joint family, carrying on business in partnership—Contract by family, if terminates with death of coparcener—Contract Act (IX of 1872), s. 253, cl. 10—Rule of Hindu law, if to be considered. By an agreement between A and B, dated 31st May 1911, the former appointed the latter to act as broker for him for 5 years or for such further period as might be mutually agreed upon between the parties. It was provided in the agreement that it might be determined by either party by giving three months' notice to the other party. In pursuance of another term of the said agreement B (the broker) appointed C to act as under-broker for him during the subsistence of the said agreement and C (the under broker) had notice of the said agreement. On 12th August 1912, the broker B, wrongfully dismissed the under-broker C, and subsequently on 2nd December 1912 in good faith entered into a second agreement with A inconsistent with the

BROKERAGE CONTRACT—concl'd

contract was validly terminated on the 2nd December 1912, the under brokerage contract also came to an end on the same day, and the plaintiff was entitled to recover damages as for the period from his dismissal on the 12th August to the termination of the contract on 2nd December 1912. *Per MOOREHEAD J.* That the three months notice

joint family (of which Y was the *Karta*) carrying on a joint family business entered into a contract of under brokerage and X subsequently died, but Y and the other party to the contract went on dealing with each other as if the contract subsisted. *Held, per CHAMBERLAIN J.* that X's death did not terminate the contract. *Per MOOREHEAD J.* Where there are two joint agents and one of them dies, upon his death the contract of agency terminates only so far as he is concerned, but not as regards the surviving agent. The rights and liabilities of coparceners in a joint Hindu family cannot be determined by exclusive reference to the Indian Contract Act, but must be considered also with regard to the general rules of Hindu Law, according to these rules, the death of one of the coparceners does not dissolve a family partnership. *RAJENDRA PRASAD v. LICHCHHABIS* (1916)

20 C. W. N. 703

BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903)

—s. 17—Mortgage executed by Collector—Stamp—Stamp Act (II of 1899) s. 3 *Held*, that a mortgage executed by a Collector under the provisions of s. 17 of the Bundelkhand Alienation of Land Act, 1903, is not exempt from stamp duty. *SOMWANSINGH v. MAYA BADAL* (1916)

I. L. R. 38 ALL 351

BURDEN OF PROOF.

See LIMITATION ACT (IX OF 1908), *Sec. 1*, Arts. 140, 141 I. L. R. 40 Bom. 239

See MORTGAGE I. L. R. 38 ALL 340

See ORDN. ESTATES ACT (I OF 1869) ss. 8, 10 I. L. R. 38 ALL 552

C**C. I. P. CONTRACT.**

See SALE OF GOODS

I. L. R. 40 Bom. 11

CALCUTTA BALED JUTE ASSOCIATION.

See CONTRACT I. L. R. 43 Calc. 77

CALCUTTA HIGH COURT.

decision of—

See PATNA HIGH COURT 20 C. W. N. 053

CALCUTTA IMPROVEMENT ACT (BENG. V OF 1911).

—s. 71, cl. (c)—

See RECORDS, POWER TO CALL FOR.

I. L. R. 43 Calc. 239

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

—ss. 341, 017—

See MUNICIPAL LAW

I. L. R. 43 I. A. 243

CARRIER.

—suit against a—

See SPECIFIC MOVABLE PROPERTY

I. L. R. 39 Mad. 1

CARRIERS.

See CARRIERS ACT (III OF 1865).

See CARRIERS BY SEA.

CARRIERS ACT (III OF 1865).

See CONTRACT ACT (IX OF 1872), ss. 50, 63
I. L. R. 40 Bom. 529

CARRIERS BY SEA.

See CONTRACT ACT (IX OF 1872), ss.
50, 63 I. L. R. 40 Bom. 529

CASTE.

See CHURCH, I. L. R. 39 Mad. 1056

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, R. 8

I. L. R. 40 Bom. 158

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE (1908), O II, R. 2
I. L. R. 38 ALL 217

See DECREE FOR POSSESSION

I. L. R. 38 ALL 509

See HINDU, *SUIT ON*

I. L. R. 40 Bom. 473

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), ss. 5, 6, 7, 14

I. L. R. 39 Mad. 727

—splitting up of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, R. 2

I. L. R. 40 Bom. 351

—suspension of—

See LIMITATION I. L. R. 43 Calc. 060

CENTRAL BUREAU REGISTER.

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 1128

CERTIFICATE OF PURCHASE.

See FORGERY I. L. R. 43 Calc. 421

CERTIFICATE OF SUCCESSION.

See CIVIL PROCEDURE CODE (1908), s. 169 I. L. R. 38 ALL 183

CERTIFICATION OF PAYMENT.

See EXECUTION OF DECREE.

I. L. R. 43 Calc. 207

CERTIFIED COPY.

filling of—

See FORGERY. I. L. R. 43 Calc. 783

CERTIORARI.

writs of—

See PRESS ACT (I OF 1910), s. 3 (1), PRO-
VISO. I. L. R. 39 Mad. 1164**CESS.**See U. P. LAND REVENUE ACT (III OF
1901), ss. 56, 86 I. L. R. 38 All. 286**CHANGE OF VILLAGE.**See RELIGIOUS ENDOWMENTS ACT (XX
1863). I. L. R. 39 Mad. 949**CHARGE.**See CRIMINAL PROCEDURE CODE, ss. 222
(2), 233. I. L. R. 38 All. 42

See HINDU LAW—WILL

I. L. R. 39 Mad. 365

See TRANSFER OF PROPERTY (IV OF 1882),
s. 59. I. L. R. 38 All. 461**CHARGE TO JURY.**

See PRACTICE. I. L. R. 40 Bom. 220

CHARITABLE OR RELIGIOUS TRUST.See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 92 I. L. R. 40 Bom. 439**CHARITABLE TRUST.**

Acts of majority binding on minority—Indian Trusts Act (II of 1882), s. 42 “Any trustees or trustee.” meaning of—Payment to some only of the trustees, not a valid payment. An act of the majority of a body of charitable trustees binds the whole body. A mortgage purporting to be on behalf of all but executed only by a majority of the trustees when the others have declined to join in its execution, is binding on all the trustees. *Teramath v. Lakshmi*, I. L. R. 6 Mad. 270, followed. A payment to some only of several trustees is not a valid payment unless he has or is held out by his co-trustees as having authority to receive the same. The words “any trustees or trustee” in s. 42 of the Indian Trusts Act mean the trustee where there is only one, the trustees where there are more. *Rambalu v. Committee of Rameshwar*, 1 Bom. L. R. 667, not followed. *Semble*: If a document is drawn up in the names of several persons and it is the intention of the parties that all should execute it, it will be incomplete and inoperative till all have done so. *Sivaswami Chetty v. Sevagan Chetty*, I. L. R. 25 Mad. 389 and *Latch v. Wedlake*, 11 A. & E., 959, followed. It is a question of fact in each case as to what was the intention of the parties. *NETHIRI MENON v. GOPALAN NAIR* (1915)

I. L. R. 39 Mad. 597

CHARTER ACT (24 & 25 VICT., C. 104).

cls. 13, 14—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), ss. 421, 233 AND 537.

I. L. R. 39 Mad. 527

CHARTER-PARTY.

See CONTRACT ACT (IX OF 1872), s. 56.

I. L. R. 40 Bom. 301

See CONTRACT ACT (IX OF 1872), ss.
56, 65. I. L. R. 40 Bom. 529**CHAUKIDARI CHAKARAN LAND.**

onus of proving—

See REMAND. I. L. R. 43 Calc. 1104

**CHAUKIDARI CHAKARAN LANDS ACT
(BENG. VI OF 1870).**

s. 1

See SIMANADARS I. L. R. 43 Calc. 227

CHETTY MONEY-LENDING FIRM.

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 527

**CHOTA NAGPUR TENANCY ACT (BENG. VI
OF 1908).**

ss. 27, 264, 528.

See JURISDICTION I. L. R. 43 Calc. 136

ss. 81, 83, 87, 256—*Dispute under s. 83, jurisdiction of Settlement Officer upon such dispute to record entry that tenure mundari khuntkati—Suit for rent instituted under Act X of 1859—Decree and purchase by landlord in execution after Chota Nagpur Tenancy Act brought into force and land recorded as above at Settlement—Title to tenure.* Under s. 83 of the Chota Nagpur Tenancy Act, the Settlement Officer has jurisdiction to decide a dispute between landlord and tenant as to whether the latter was a *mundari khuntkatidar* and to record an entry to the effect in the record-of-rights. Where pending a suit for rent brought under Act X of 1859, the Chota Nagpur Tenancy Act (Beng. VI of 1908) came into operation, and the landlord in execution of the decree obtained in the suit put up the holding to sale and purchased it, but meanwhile in the course of settlement proceedings the land was recorded as the *mundari khuntkati* of the defendant. *Held*, that although the new Act did not apply to the suit, it governed proceedings in execution instituted after the suit had terminated in a decree; and the entry that the land was the *mundari khuntkati* of the tenants being conclusive evidence under s. 256 of the Act, the landlord acquired no title in the land. *JOGENDRA NATH DEY v. GOUR SINGH MURA* (1915)

20 C. W. N. 582

s. 184, 191 (2), 208 (2), 210—*Rent decree—Execution by arrest of judgment-debtor in the first instance, if legal—Effect.* A landlord who was obtained a decree for rent of a tenure under the Chota Nagpur Tenancy Act may proceed at once to execute it against the person of the tenant and

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)—*conold.*

s. 181—*conold.*

he is not bound to put up the tenure to sale in the

for money has no application to such a case
MADAN MOHAN NATH SAHU DEO v PRATAP UPAD
NATH SAHU DEO (1915) . 20 C. W. N. 111

s. 231—*Mortgage—decree—Execution sale—Purchase by decree holder—Application by judgment debtor to set aside sale—Limitation Act (IX of 1908), Sec. 1, Art. 166, or s. 231, Chota Nagpur Tenancy Act (Beng. VI of 1908), applicable* In execution of a mortgage-decree, the mortgaged property was sold on 21st December 1912, and was purchased by the decree holder and the sale was confirmed on the 16th February 1913. On 28th August, 1914, the judgment-debtor applied to set aside the sale on the ground that under s. 47 of Chota Nagpur Tenancy Act, the sale was null and void. *Held*, that the application was barred by limitation, if not under Art. 166 of the Limitation Act at any rate under s. 231 of the Chota Nagpur Tenancy Act. ANUMONI GOSWAMI v ROHAY MAJHI (1916). 20 C. W. N. 1243

CHOWKIDARI CHAKRAN LAND.

See CHAKRIDARI CHAKRAN LAND

CHURCH.

Roman Catholic Church
—*Convert to Roman Catholic religion—Claim for certain exclusive rights in the church by one set of converts over another, on the ground of superiority of caste, unsustainability of—Internal management of church, absolute right of church authorities over* According to Canon Law a Roman Catholic church becomes, as soon as it is consecrated, the property of the church authorities, irrespective of the fact that any particular worshipper or worshippers contributed to its construction. The Bishop and other church authorities have the exclusive right to the internal management of the church, whether relating to secular or religious matters, such as accommodating the congregation inside the church and prescribing the part to be taken by the congregation in the services and the ceremonies. The Canon Law knows no distinction of castes amongst the Roman Catholics and no convert to Roman Catholicism can claim any special or exclusive rights or privileges in the church on account of any supposed superiority of his caste over that of others. Where a certain section of Roman Catholic converts of a place claimed as against the local church authorities and as against another set of converts whom they considered to be of inferior caste, an exclusive right to sit in and worship from a particular portion of the church during time of the service and to take part in certain duties connected with the church services. *Held* that such a claim was legally unsustainable, however long such privilege might have been

CHURCH—*conold.*

enjoyed, whether by reason of any such custom or by reason of any agreement to that effect with any former Bishop of the locality. *Lang v The Bishop of Cape Town, 1300 P. C. C. (N. S.), 411, and Merriman v Williams, L. R. 7 N. C. 481, distinguished.* MICHAEL PILLAI v RIT RAY BARTLE (1915) I. L. R. 33 Mad. 1050

CHURCH AUTHORITIES.

See CHURCH . I. L. R. 33 Mad. 1050

CIVIL AND REVENUE COURTS

Jurisdiction of—

See AGRA TENANCY ACT (II OF 1901)
s. 161 I. L. R. 33 All. 322

Jurisdiction of—

See U. P. LAND REVENUE ACT (III OF 1901) s. 233, cl. (1).
I. L. R. 38 All. 243

CIVIL COURT.

See RIGHT OF SUIT

I. L. R. 40 Bom. 200

general rules of practice for—

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 63. I. L. R. 33 All. 481

Jurisdiction of—

See ADEN SETTLEMENT REGULATION (411 OF 1900), s. 13 I. L. R. 40 Bom. 440

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), ss. 25, 30.
I. L. R. 40 Bom. 55

See MADRAS ESTATES LAND ACT (I OF 1903), s. 6, sub s. (6) s. 8.
I. L. R. 30 Mad. 944

Jurisdiction, under of

—*Onus—Inam, grant of—Kudiramam—Right over* *crash of* A party seeking to oust the jurisdiction of ordinary Civil Courts must establish his right to do so. *Inday Ching Vagda v Pata Koxchi Imlatarambaya, (1910) Mad. II v 632, and Virabhadrayya v Sunti Venkanna, 24 Mad. L. J. 632, followed.* There is no presumption that an inamdar to whom an inam was granted was not owner of the kudiramam right at the date of the grants. *Imlata Sadrula v Dori Sitarananda, 26 Mad. L. J. 553 and Ponnamayy Padayachi v Aaruppu dayan, 26 Mad. L. J. 553, referred to.* *MAIMATH JAGANNATHA CHARYILL v KUTAMBARAYUDU (1914) I. L. R. 39 Mad. 21*

CIVIL COURTS ACT (XII OF 1837).

s. 7, cl. (1), 18—

See JURISDICTION I. L. R. 43 Calc. 630

CIVIL PROCEDURE CODE (ACT X OF 1877).

s. 553—

See REMEDIES I. L. R. 33 All. 163

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

ss. 50, 211, 212—

Sec JURISDICTION

I. L. R. 43 Calc. 650

ss. 223, 224, 235, 248, 249—

See REVIVOR. I. L. R. 43 Calc. 903

s. 229 B—

Sec FOREIGN DECREE

I. L. R. 40 Bom. 551

s. 232—

See SPECIFIC PERFORMANCE.

I. L. R. 43 Calc. 990

s. 244—

See CIVIL PROCEDURE CODE (ACT V OF 1908). I. L. R. 39 Mad. 541

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 88, 89.

I. L. R. 40 Bom. 321

ss. 244, 258—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2:

I. L. R. 40 Bom. 333

s. 258—*Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Mortgagee (decree-holder) left in possession under decree—Liability under decree to account and to credit surplus income annually—Receipt by mortgagee, not certified to Court, effect of—Receipt, if payment under or adjustment of decree—Certificate within ninety days, if necessary.* Where under the terms of a decree, the decree-holders (mortgagees) were to be in possession of the mortgaged property for six years, to render accounts every year and to give credit for any surplus income accruing from the lands, and at the end of eight years the judgment-debtor applied for the taking of accounts and delivery of possession of the lands: *Held*, that the receipts by the decree-holders of the income from the lands were not payments under, or adjustments of, the decree, under s. 258 of the Civil Procedure Code (Act XIV of 1882) corresponding to Order XXI, rule 2 of the new Code, and did not require to be certified to the Court within ninety days from the dates when the incomes were received by the decree-holders. *Vaidhinadasamy Ayyar v. Somasundram Pillai*, I. L. R. 28 Mad. 473, 478, followed. *Ramasami Naik v. Ramasami Chetti*, I. L. R. 30 Mad. 255, 265 and *Nistarini Dasi v. Kazim Alini*, 12 C. L. J., 65, distinguished *YELLA REDDI v. SYED MUHAMMADALLI* (1915)

I. L. R. 39 Mad. 1026

ss. 366, 371—*Abatement of suit—Mortgage—Joint Hindu family—Redemption suit by the mortgagor in his personal right—Second suit to redeem by coparceners not barred by abatement.* One V, a member of an undivided Hindu family, instituted in the year 1881 a suit for redemption against the mortgagee, but pending the suit he died on the 9th July 1883. On the 15th October 1883, the Court directed that the suit should abate. Subsequently in the year 1912, T V's son, and three grandsons filed a second suit for redemption of the

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*ss. 366, 371—*concl'd.*

same property alleging that the property being ancestral they had interest in it by birth. It was also alleged that an adult brother of V was interested as a coparcener in the same property. The trial Court dismissed the suit on the strength of the order of abatement passed on the 15th October 1883. On appeal, the District Court reversed the decree and remanded the suit for disposal. On appeal to the High Court: *Held*, that there being no indication that V's suit was brought in a representative capacity it would certainly be defective as a redemption suit according to all canons of procedure, and if the suit was defective V's personal right to sue did not embrace the rights of his coparceners and none of them would be concluded by the application of s. 371 of Civil Procedure Code (Act XIV of 1882). *Held*, also, that apart from the question raised upon s. 371, there was sufficient authority for the conclusion that since the introduction of the Code of 1877 no legal proceeding by V short of actual redemption would deprive his coparceners of their right to redeem against the mortgagee. *Per CURIAM*: The right of a mortgagee to enforce his security by sale in a suit against the person who executes with authority, express or implied, a mortgage of family property, without joining the coparceners interested, results from the authorized mortgage which carries with it the all embracing remedy. It does not follow that the defect of one co-owner who desires to redeem will bar the exercise of the same right by another: hence arises the necessity for joining all parties interested in one suit. *RAMCHANDRA NARAYAN v. SHIRIPATRAO* (1915) I. L. R. 40 Bom. 248

s. 375—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 89, O. XXIII, r. 3.

I. L. R. 40 Bom. 386

s. 392—

See RIGHT OF SUIT.

I. L. R. 39 Mad. 501

s. 462—

See TRUSTEE. I. L. R. 39 Mad. 115

Compromise of suit on behalf of minor made without obtaining leave of the Court—Liability of other party to a joint bond so executed as part of the compromise. A compromise made on behalf of a minor without having complied with the requirements of s. 462 of the Civil Procedure Code, 1882, as to obtaining leave of the Court, is not enforceable against the minor. The fact that a joint bond executed as a part of the compromise was not enforceable against the minor did not absolve the other obligee from liability. *JAMINA BAI v. VASANTA RAO* (1916)

I. L. R. 39 Mad. 409

s. 539—

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 43 Calc. 1085

CIVIL PROCEDURE CODE (ACT XIV OF 1882)
—contd.

s. 584—

See REMAND. I. L. R. 43 Calc. 1104

CIVIL PROCEDURE CODE (ACT V OF 1908).

See PRESIDENCY SMALL CAUSE COURTS
(ACT XV OF 1882), s. 19, cl. (4)

I. L. R. 39 Mad. 219

— s. 2, cl. (12); O. XXII, r. 1—*Legl*

Representative—Survival of right to sue—Daughter a
sue for possession of father's estate—Death of
daughter—Right of father's heirs to continue suit
 Pending a suit by a daughter brought after the
 death of her mother to recover possession of her
 father's property as his heir from strangers whom
 she alleged to be trespassers, the plaintiff (daughter)
 died. In an application by the grandsons of the
 deceased plaintiff's father a brother as his heirs to

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 11—contd.

to recover Rs. 788 from the estate of K and in the
 alternative to recover Rs. 577 from the estate of B.
 The defendants Nos. 1 to 3 contended that the suit
 was barred by *res judicata* and also pleaded limi-
 tation. *Held*, that the subsequent suit for the
 mortgage-debt was not barred by *res judicata*, as
 the prior claim of 1910 for possession was not
 really a claim on the mortgage but a claim by
 virtue of the purchase by the plaintiff of the mort-
 gagee's rights. *Held*, further, that the considera-
 tion for the mortgage being unlawful under s. 24 of
 the Contract Act, 1872, it failed ab initio and the
 claim for repayment of the money advanced to the
 mortgagor as money had and received being

I. L. R. 40 Bom. 614

2. Prior suit to set
 and alienation made by minor's mother—Mort-
 gage created by alienor before suit—Mortgagee not
 made party to the suit—Partial representation by
 mortgagor—Subsequent suit by mortgagee to support
 alienation—Priority between parties—Subsequent
 suit not barred by *res judicata*—Meaning of words
 'claiming under'. The property in suit origi-
 nally belonged to one Devare. In 1883 during
 the minority of Devare, his mother sold it
 to the Bhojys from whom one Bavachi received
 it in exchange for another parcel of land. In
 1891 by a simple mortgage Bavachi mortgaged
 the property to the plaintiff. In 1893, a suit was
 brought by Devare against his mother, Bavachi,
 and the Bhojys in order to set aside the sale by his
 mother to the Bhojys. That suit was successful
 and the result was that the sale to Bhojys was set
 aside. In 1901 the plaintiff obtained a decree on
 his mortgage against Bavachi. The property was
 put to sale and was purchased by the plaintiff
 with permission. But when the plaintiff endeav-
 oured to get possession he was resisted by Devare.
 The plaintiff therefore brought a suit in 1902
 against Devare, Bavachi and the Bhojys to recover
 possession. The defendant Devare contended that
 the plaintiff's suit was barred by *res judicata* as he
 was bound by the decree obtained against his
 mortgagor Bavachi in the suit of 1893. *Held*, that
 as a mere mortgagee the plaintiff would not be
 bound by the earlier decision because his title
 arose prior to the suit in which the decree against
 his mortgagor was obtained, and the mortgagee
 possesses only the equity of redemption and is not
 in any such estate as would enable him suffi-
 ciently to represent the mortgagor in the suit
 instituted after the mortgagee's sale. *See* *Law*
Journal, I. L. R. 512 574, 576, 577, 578. *RAM*
CHANDRA DUNGOO v. MALKARA (1916)

I. L. R. 40 Bom. 679

3. — *Res Judicata*—
 Applicability of the principle as against co-de-

I. L. R. 39 Mad. 382

s. 10—

See STAY OF SUIT

I. L. R. 43 Calc. 144

s. 11—

See RES JUDICATA

I. L. R. 40 Bom. 675

See SARANJAM I. L. R. 40 Bom. 606

1. — Prior suit to claim

possession by virtue of the purchase of mortgagee's
 rights—Subsequent suit for repayment of the money
 advanced on mortgage—No bar if *res judicata*—
Bhigdar (Honn. J. of 1862)—Mortgage of
 unrecognised share of a *bhag*—Mortgage not a
 lawful consideration—Indian Contract Act (IX of
 1922), s. 24—Indian Limitation Act (IX of 1908), s.
 62. One B. mortgaged with possession an unrecog-
 nised share of a *bhag* with R. in May 19 1893
 contrary to the provisions of the *Bhigdar* Act,
 1862. The mortgage deed provided that after
 possession by the mortgagee for eleven years the
 mortgage amount was to be paid to him wherever
 he should demand it either out of the property
 or by the mortgagor or his heirs personally.
 In 1903 B. obtained a money decree against
 the estate of R. with a mortgage right was put up
 to sale and purchased by the plaintiff at a
 Court sale for Rs. 577. In 1910, the plaintiff filed
 a suit No. 176 of 1910 against the representatives
 of R. and K. to claim possession. No claim was
 made in that suit for payment of the amount
 of the mortgage-debt. The suit failed on
 the ground that the mortgage was invalid and
 therefore unenforceable. In 1911, another suit
 was filed by the plaintiff against the same parties

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 11—contd.

fendants. A deposit of money in a firm was owned in equal moieties by D and L. In a suit brought by D in the High Court of Bombay to recover his moiety of the deposit, his brother L who was a partner in the firm admitted his claim; but it was contested by the other partners, defendants Nos. 1 and 2. Defendants Nos. 3 to 6 contended that they were not partners in the firm at all. The Court passed a decree against L and defendants Nos. 1 and 2. The firm made losses and ceased to work. L, thereupon, filed the present suit in the Court of the Subordinate Judge at Surat for a Dissolution of the firm and for taking its accounts. D was made a party to the suit as a creditor of the firm. The defendants Nos. 3 to 6 again contended that they were not partners in the firm. A question having arisen whether the contention was *res judicata* in the present suit: *Held*, that the relief given to D in the earlier suit did not require or involve a decision of any case between the co-defendants, and, therefore, the co-defendants were not to be bound as between each other by the Court's proceeding and decision which were necessary only to the decree which D obtained. *Per* BATCHELOR J. "The Court is slow to enforce the principle of *res judicata* as against co-defendants, and the limits of the operation of the principle in such cases seem to me to be narrowly laid down." *FAKIRCHAND LAL-LUBHAI v. NAGINCHAND KALIDAS* (1915)

I. L. R. 40 Bom. 210

4. *Res judicata*—*Decision embodied in decree operates as res judicata.* In 1900, the defendants obtained a *mulgeni* (permanent) lease of certain lands from the then manager of the temple. In 1910, the plaintiff, the new manager, sued the defendants in ejectment praying that the *mulgeni* lease was not binding on him and that the defendants being annual tenants should be evicted. The Court held in favour of the plaintiff on the first ground, but for want of notice held that he was not entitled at that stage to evict the defendants. Then after due notice given, the plaintiff again sued to eject the defendants. They again pleaded the *mulgeni* lease. The Court held that that defence was not open to them, as it was barred by *res judicata*. On appeal, *held*, that the defence was barred by *res judicata*; for the decision of the Court in the earlier suit in favour of the plaintiff upon the first part of his prayer found a place in the decretal order and was as much decreed as the other part of the prayer which in the second part of that decretal order was rejected. *MOTA HOLAPPA v. VITHAL GOPAL* (1916)

I. L. R. 40 Bom. 662

5. *Res judicata*—*Decision of a Boundary Settlement Officer—Grounds of decision, if res judicata—Boundaries Act (XXVIII of 1860), ss. 24 and 25—Estoppel.* Where a Boundary Settlement Officer

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 11—concl.

decided under the Boundaries Act (XXVIII of 1860) that certain lands did not belong to a *mittadar* but to the Government on the ground that they never had formed part of the area of the *mitta*, and no suit was brought by the *mittadar* to contest the decision under s. 25 of the Act. *Held*, that the ground of the decision as well as the actual decision was *res judicata* in a subsequent suit instituted by the *mittadar* to recover the lands as having formed part of the *mitta* or in the alternative for a reduction of the *peshkash* of the *mitta* *Kamaraju v. The Secretary of State for India, I. L. R. 11 Mad. 309*, followed. *Per* SESHAGIRI AYYAR J. The decision of the Survey Officer is binding upon the parties whether it is *res judicata* in the technical sense in which the term is used in the Civil Procedure Code or not. *Krishna Behari Roy v. Brojeswari Chowdarnee, L. R. 2 I. A. 283, 286* and *In re Bank of Hindustan, China and Japan (Alison's Case), L. R. 9 Ch. App. 1*, referred to. *MUTHAMMAL v. THE SECRETARY OF STATE FOR INDIA* (1916)

s. 11 ; O. II, r. 2—

See U. P. LAND REVENUE ACT (III OF 1901), ss. 111, 112, 233 (k).

I. L. R. 38 All. 302

s. 16 (d)—Maintenance, suit for—Charge of maintenance—Right or interest in immoveable property—Jurisdiction. Plaintiff S filed a suit a Poona Court against her daughter-in-law L (defendant No. 1) and her father (defendant No. 2) both of whom resided in a native state beyond the jurisdiction of the Court for a declaration that she was entitled to a maintenance allowance and sought to make the same a charge on the immoveable property of L within the jurisdiction of the Court. The lower Court held that it had no jurisdiction to try the suit as the claim for maintenance was not one for the determination of any right to, or interest in, the immoveable property as required by clause (d) of s. 16 of the Civil Procedure Code. The plaintiff having appealed: *Held*, that the Court had jurisdiction to proceed against defendant No. 1 as the question whether or not plaintiff was entitled to a right or interest in the immoveable property by way of charge as security for maintenance which might be decreed, was a question directly within the terms of section 16 (d) of the Civil Procedure Code, 1908. *Held*, also, that the Court had no jurisdiction against defendant No. 2. *SITABAI v. LAXMIBAI* (1915)

s. 24—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 17.

I. L. R. 38 All. 425

s. 24 (1) (a)—

See DIVORCE ACT (IV OF 1869), ss. 3, 16, 37, 44.

I. L. R. 40 Bom. 109

CIVIL PROCEDURE CODE (ACT V OF 1908),
—*contd.*

s. 24, cl. (3) (b)—

See CIVIL RULES OF PRACTICE, R. 161 (a).
I. L. R. 39 Mad. 485

s. 44, O. XXI, r. 7—

See FOREIGN DECREE

I. L. R. 40 Bom. 551

s. 47—*Suit for money—Death of Defendant during suit leaving will—Heirs substituted in ignorance of will and decree against heirs—Execution against estate—Objection by executor upheld—Executor, if bound—Appropriate remedy if decree holder—Suit upon judgment, if lost—Limitation Act (13 of 1908), Sec 1, Art 122* M the defendant in a suit for recovery of money having died during its pendency leaving a will whereby he had appointed the widow of his sons executrices to his estate, the plaintiff who was unaware of the existence of the will substituted his sons in his place in the records without objection and got a decree. Execution of the decree against the estate of M was opposed by the executrices. Held that the executrices were not bound by the decree and the decree could not be executed against the estate in their hands. *Quare* Whether the order of the executing Court dismissing the application on the objection of the executrices was not an order under s. 47, merely because the executrices could not in popular language be called representatives of the sons of the deceased debtor. Held, that the executrices were not representatives of the judgment debtors inasmuch as they were not bound by the decree. That the remedy of the decree holder was either (i) to have the decree vacated the suit restored, the executrices brought on the record and a new decree made against them, or (ii) to institute a suit on the judgment and obtain a decree thereon against the executrices. *Ashikumar v Pelaram*, 15 C. L. J. 362 s. c. 15 C. W. N. 173, and *Prasanna Chander v Aristo Chaitanya*, 1 L. R. 1 Cole 312 *Quare* Under what circumstances a suit lies upon a judgment passed by a Court in British India. Where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, in which an action to enforce the judgment may be maintained provided the judgment cannot be enforced in some other way. The Limitation Act cannot give rise to a cause of action where none exists independently of the provisions thereof. *Haji Churan Nath v Sukhoda Sundari Devi* (1913)

20 C. W. N. 53

s. 47, O. XXII, r. 10—

—*Decree in mortgage suit—Preliminary decree—Final decree, procedure to, not by way of execution—Application to continue the suit after preliminary decree, order dismissing not appealable* After the passing of the preliminary decree in a mortgage suit, the suit is continued until the stage of the final decree is reached. *Ashok Kumar v Ganga Datta*, 1 L. R. 33 Cal. 68

CIVIL PROCEDURE CODE (ACT V OF 1908)—
—*contd.*s. 47—*contd.*

and *Munna Lal v Sarat Chunder*, 21 C. L. J. 119, explained. Where under the will of A, his executors filed a suit on a mortgage and one of them died before, and the other after passing of the preliminary decree, and his senior widow made an application to continue the suit. Held, that an order dismissing such an application is not appealable, under Order XXII, rule 10 of the Code. *Feraiz v Curran*, L. R. 2 Ir R 470, followed. *Lakshmi Achu v Subbarama Ayyan* (1915)

I. L. R. 39 Mad. 483

s. 47 (3), O. XXI, r. 16—*Language a application for execution opposed by attaching creditor of decree—Matter, if appealable* S, a purchaser of a decree, having applied for execution after substitution of his name as a decree holder, M a creditor of the judgment-debtor who had attached the decree opposed the application alleging that S's purchase was fraudulent and bogus. The first Court upheld the objection, but the Appellate Court found S's purchase to be good and valid. Held, that the order came within the purview of sub-s. (3) to s. 47 of the Civil Procedure Code even though (M's objection apart) the matter came under O. XXI r. 16 of the Code. *Pravin v S. 47 sub-s. (3) distinguished from the corresponding provision of s. 214 of the old Code.* *Rama Chander v Namrao*, 11 C. W. N. 433, not followed. *Mohini Mohan Majumdar v Subendran Chatterjee* (1916)

20 C. W. N. 679

s. 47, 73, 104—*Rateable distribution, order for—Right of appeal—Mortgage-decree—Provision for execution personally against the mortgagor—Application for execution if sale of mortgaged property—Sale held—Application, not disposed of—Sale of other properties by other decree holders—Process to paid into Court—Application for rateable distribution by holder of mortgage decree, if maintainable—Application for execution not formally disposed of, if pending* An order for rateable distribution under s. 73 of the Code of Civil Procedure is appealable if it was passed between the parties to the suit in which the decree was passed and related to the execution of the decree and made under the provisions of s. 47 of the Code. s. 73 of the Code does not say that no appeal shall be against orders passed under it, nor does the omission to provide for an appeal against such orders in s. 104 of the Code deprive a party of the right of appeal conferred by other provisions of the Code. Where an application for execution prayed for specific reliefs and they were all granted by the Court and obtained by the decree holder, but no final order of disposal was passed by the Court on the application, it must be decreed to be a pending application for execution for purposes of s. 73 of the Code. *Karavethavar, Rajan v Venkata Reddy* (1915)

I. L. R. 39 Mad. 570

s. 48—

See VIRTUAL DECREE.

I. L. R. 39 Mad. 514

CIVIL PROCEDURE CODE (ACT V OF 1908)

—contd.

s. 115—contd.

Held, overruling the objection, that the application was competent under s. 115 of the Civil Procedure Code Act (V of 1908), as the order was a "case decided in which no appeal lies" within the meaning of the section. *Held*, further, that the order was open to consideration under the wider provisions of s. 5 of Regulation II of 1827, continued in force by virtue of s. 9 of the High Courts Act, 1861, and saved from repeal by the operative sections of the General Repealing Act (XII of 1873). *Per* BATHUR J. "The word 'case' which occurs in s. 115 of the Civil Procedure Code (Act V of 1908), is a word of wide or comprehensive import and clearly covers a far larger area than would be covered by such a word as 'suit' or 'appeal'." "Inasmuch as s. 115 is merely an empowering section granting certain jurisdiction to the High Court, and as the use or exercise of that jurisdiction will, within the prescribed limits, be regulated by the discretion of the High Court, the section ought to receive rather a liberal than a narrow interpretation." *Bar* ATRANI v. DEEP-SING BARRIA THAKOR (1915)

I. L. R. 40 Bom. 38

2. *High Court—Revisi-*
Personal Jurisdiction—Decision of District Court—Bombay District Municipalities Act (Bom. Act III of 1901), s. 160. No application can be made under the revisional jurisdiction of the High Court from the decision of a District Court under clause (3) of s. 160 of the Bombay District Municipalities Act (Bom. Act III of 1901). *Municipality of Belgaum v. KUDRAPPA* (1916)

I. L. R. 40 Bom. 509

3. *Wrong decision of the lower Appellate Court that the first Court had or had not jurisdiction to entertain a suit—Revision—Power of High Court to interfere in. Held*, by the *Full Bench* (SADASIVA AYYAR J. dissenting), that the High Court has jurisdiction to interfere under s. 115, Civil Procedure Code (Act V of 1908) where an Appellate Court erroneously decides in the exercise of its admitted jurisdiction as an Appellate Court, that the Court of first instance had or had not jurisdiction to entertain a suit. Case-law on the subject reviewed. *Per* WALLIS C.J. The power of the High Court to interfere in such matters is under the first part of s. 115. The function of an Appellate Court is to do that which the first Court ought to have done. *Per* SADASIVA AYYAR J. Under none of the three parts of s. 115 has the High Court power to interfere in such matters. Clauses (a) and (b) of s. 115 apply only to jurisdiction of the Court whose decree or order is sought to be revised, to pass such order or decree and not to its decision on the jurisdiction of some other Court. The words "acted illegally" in s. 115, Civil Procedure Code, mean "giving a wilfully perverse, but not a mere erroneous, decision on a question of law."

CIVIL PROCEDURE CODE (ACT V OF 1908)—
s. 115—contd.

s. 115—contd.

ARGHAYYA v. SRI SEETHARAMACHANDRA RAO (1912)

I. L. R. 39 Mad. 195

ss. 117, 151; O. XL, r. 10—

See INSOLVENCY I. L. R. 43 Cal. 243

s. 141; O. XL, r. 1—

See COMMON MANAGER

I. L. R. 43 Cal. 986

s. 144—

See DEKHAJ AGRICULTURISTS' REVENUE ACT (XVII of 1879), s. 22.

I. L. R. 40 Bom. 194

Decree reversed on appeal—Bond fide auction purchased under original decree. Requisition cannot be obtained under s. 144 of the Code of Civil Procedure as against a bond fide purchaser for value at an auction sale held by a Court which had jurisdiction to hold the same. Rewa Mahon v. Ram Kishen Singh, I. L. R. 14 Cal. 18, Zaim-ul-ghidin Khan v. Muhammad Asghar Ali Khan, I. L. R. 10 All. 160, and Abbas Husain Khan v. Dilband Begam, 16 Oudh Cases 225, referred to. PARI LAT v. HANIF-UN-NISSA BIBI (1916)

I. L. R. 38 All. 240

s. 145; O. XXXIV, r. 14—

Execution of decree—Security for default of judgment-debtor—Mode of enforcement of security. On attachment of certain property under a decree by a decree-holder, a third party came forward claiming the attached property as his own but subsequently entered into a compromise with the decree-holder whereby he made himself responsible for payment of the decretal amount and executed a security bond in which, in addition to undertaking a personal liability for the judgment-debtor's default, he also hypothecated certain property: *Held*, that default having been made by the judgment-debtor, the decree-holder was at liberty to enforce the security in the manner provided for by s. 145 of the Code of Civil Procedure, and that Order XXXIV, rule 14, was no bar to his enforcing it against the hypothecated property as well as any other property of the surety. *Banki Kaur v. Sarup Ram, I. L. R. 17 All. 99, referred to. Mukta Prasad v. MAHARAO PRASAD* (1916)

s. 148—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIV, r. 8, proviso.

I. L. R. 39 Mad. 876

s. 153—Partition suit—Omission by plaintiff to put in some properties in the list of joint properties in the plaint—Dismissal of suit—Power of amendment of plaint by the first Court as also by the Appellate Court. Per JYOTA PRASAD J. In Hindu, all the properties must be included in the action, and the reason for this proposition is to

CIVIL PROCEDURE CODE (ACT V OF 1908) —

could.

O. II, r. 2—*concl.*

was for them subsequently. *Jibunt Nakh Khan v. Shah Nakh Chakraborty*, I. L. R. 8 Cal. 819, and *Panpur Raja v. Suriga Roy*, I. L. R. 12 I. A. 116 : s. c. I. L. R. 8 Mad. 520, distinguished. *Kali Kumar Chakraborty v. Aslam* (1914).

O. III, r. 4—

Sec VARADACHARI
I. L. R. 43 Cal. 884
O. V, rr. 12, 17 : O. IX, r. 13—
Sec SUMMONS, SERVICE OF.
I. L. R. 43 Cal. 447
O. VIII, r. 5—

Sec EX PARTE DECREE.

I. L. R. 43 Cal. 1001

O. IX, r. 2—*Dismissal of suit—*

Appel. Held, that no appeal lies from an order dismissing a suit under Order IX, rule 2 of the Code had not been served on the defendants in consequence of the failure of the plaintiff to deposit the requisite court-fee for such service. *Lucky Churn Choudhry v. Budur-un-nisa*, I. L. R. 9 Cal. 627, *Parbat v. Tooki Kapri*, 20 Indian Cases, 1, followed. *Lachmi Naray v. Dabari Lal* (1916)

O. IX, r. 9 : O. XLIII, r. 1 (c)—

*Application by judgment-debtor under O. XXI, r. 90 to set aside sale—Dismissal for default—Application for restoration, rejection of—Order if appealable—Application to set aside sale, if "suit," O. IX, r. 9 of the Civil Procedure Code is applicable to applications for setting aside sales which have been dismissed for default. *Dhyan Nishha Bibee v. Hemant Kumar Ray*, 19 C. W. N. 758, and *Sagdar Ali v. Krishna Lal*, 12 C. L. J. 6, relied on. An application to set aside a sale is a proceeding which may terminate in an adjudication such as is referred to in s. 2 of the Civil Procedure Code, and if the question had been *res integra*, the Court would have held that it was a suit within the meaning of*

O. XLIII, r. 1, cl. (c). *Charu Chandra Ghose v. Chand Charan Roy Choudhury*, 19 C. W. N. 25, referred to. *DIRENDRA NATH BANERJI* (1916)
20 C. W. N. 1208
O. XI, r. 2—

Sec INTERROGATORIES.

O. XI, r. 21—*Procedure—Plaintiff*

under suspicion of suppressing documents relating to the matter at issue—Dismissal of suit. Where a

plaintiff had given the Court strong grounds for believing that he was keeping out of the way documents which would throw light on the subject matter of the suit, but there had been no order made for discovery or inspection of documents, it was held that the Court was not justified in dis-

could.

CIVIL PROCEDURE CODE (ACT V OF 1908) —

O. II, r. 2—*could.*

shortly afterwards survey No. 321 to Z, who was a brother of B, joint in estate. After the widow's death, B, a daughter of Z, sued D and Z (another daughter of Z) to recover possession of survey No. 321; but the suit was at her request dismissed. B then having sold the three survey numbers to the plaintiff, the present suit was brought against the two daughters, and B and Z, to recover possession of the three survey numbers. The lower Court decreed the suit on the preliminary ground that since B omitted to sue in respect of survey numbers 403 and 404 in the first suit, the plaintiff was debarred from preferring his claim to those numbers in the present suit. The plaintiff having applied, *Held*, that the suit was not barred by the provisions of Order II, rule 2 of the Civil Procedure Code inasmuch as the two sets of facts which required to be proved in both suits in order to enable the plaintiff to succeed were different sets of facts, and the causes of action accordingly were different. *Soot Varad Kishna v. Ramnarai* (1916)

2. *Partition—Separate*

suits for property in different districts—Cause of action. The plaintiff as member of a joint Hindu

family brought a suit for partition of certain property in the district of Sultanpur. He admitted that he was not in possession of this property, and paid an *ad valorem* court-fee on his plaint. This suit was settled by a compromise. Subsequently the plaintiff brought a separate suit in Allahabad for partition of some of the joint-family property situated in that district; but in this suit he alleged that he was in joint and undivided possession and paid a court-fee of Rs. 10 as on an ordinary partition suit. *Held*, that the omission of the Allahabad property from his suit in Sultanpur was not a bar to the plaintiff's second suit and that the case did not fall within Order II, rule 2, of the Code of Civil Procedure. *Manu Ram Chakraborty v. Ganesh Chakraborty*, 16 Indian Cases, 353, *Ukha v. Daga*, I. L. R. 7 Bom. 182, and *Subba Rao v. Rama Rao*, 8 Mad. H. C. R. 376, referred to.

I. L. R. 38 All. 217

3. *Omission to sue for*

*a portion of claim—Subsequent suit for that portion, if free. The plaintiff sued for the possession of a holding consisting of a homestead and arable lands attached thereto. He had previously sued for this possession of that portion of the holding only which included the homestead on the allegation that the defendant had dispossessed him of the homestead. This suit was dismissed. *Held*, that as it appeared from the evidence in this case that plaintiff had been dispossessed of the arable land at the same time as the homestead, the whole suit was barred. The plaintiff having in the previous suit omitted to sue for a portion of his claim, namely, for the arable lands could not under O. II, r. 2 of the Code of Civil Procedure be permitted to*

CIVIL PROCEDURE CODE (ACT V OF 1908)

contd.

O. XXI, r. 2—contd.

J 327, and *Bhagat Lal v Chada Lal*, 12 All T. J. 825, referred to *Lalji, Narain Ganguli v Fela-mani Das*, 20 C. L. J. 131, dissented from
 CHATTAR SINGH v AMIN SINGH (1916)
 I. L. R. 38 All. 204

3. Limitation Act (IX of 1908), s. 19, 20—Payment extending limitation—Certification of payment by decree holders—State-

had received a certain sum from the judgment-debtor and relied on this payment as saving limitation. It was found that the payment had in fact been made by the judgment-debtor himself by way of interest. *Held*, that the decree holder may either apply to certify payment before execution or may do so in his application for execution of the decree. That there was sufficient certification by the decree holder and under the circumstances it

who made it and the authority by which it was made were immaterial. *KARATHANAYAKA Baidi v SARACHIA LAL NARAYAN* (1915) 20 C. W. N. 272

O. XXI, r. 5—Agreement between

Court by one of the judgment debtors to enter up satisfaction of the decree as against him, on the ground that there was an agreement to that effect entered into between himself and the decree holder prior to the passing of the decree. The latter objected that such an application was not sustainable. *Held*, that the application was

Hasan Ali v Ganai Ahim, I L R 31 Cal. 179, discussed from *SUBRAMANIAM PILLAI v KUNAWA VELU AMBALAM* (1915). I. L. R. 39 Mad. 541

On application by a person to have his name substituted as decree holder upon the ground that he was in fact the true owner of the decree, an order was passed, permitting the applicant to judgment debtor, permitting the applicant to

of the
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 rule the decree as against the applicant to
 appb—
 All T. J. 206, followed. *Jay Singh v Jagan*
 I. L. R. 38 All. 283

CIVIL PROCEDURE CODE (ACT V OF 1908)

—contd.

O. XI, r. 21—contd.

making the suit, purporting to act under Order XI, rule 21, of the Code of Civil Procedure. *Kishan Lal v SURYAY SINGH* (1915)

O. XVI, rr. 10, 12—Fine for non-production of documents, conditions to be fulfilled before imposing fine—Duty of Courts and Settlement Officers to strictly follow the law relating to issue and service of summons. O. XVI, r. 10, of the Civil Procedure Code does not apply where there has been no summons upon any body to produce the documents and no order under r. 12 can be made until the procedure laid down in r. 10 has been followed where that rule applies. The Civil Court, and particularly the panchayat Settlement Court, which cause a large amount of disturbance to local interests, cannot be too careful to follow the provisions of law strictly as regards summoning persons and documents before them. *MAHARAJ GRAMMA NAKHRI v THE SECRETARY OF STATE FOR INDIA* (1916) 20 C. W. N. 511

O. XXI, r. 2—

SEE EXECUTION OF DECREE

I. L. R. 43 Cal. 207

1. Civil Procedure Code (Act XIV of 1859), s. 234, 235—Decree—Execution—Dation of the decree—Payment or ad-judgment not certified in the Court—Subsequent fraudulent execution of a decree was compromised by the parties out of Court. The payment, however, was not certified to the Court. The decree holder having fraudulently applied for the execution of the decree *Held*, that the Court should not in the exercise of its duty under s. 234 of the Civil Procedure Code, 1859, allow a clear case of fraud to be corrected and compound by the provisions of s. 235 of the Civil Procedure Code, 1859, or Order XXI, rule 2, Civil Procedure Code, 1908. *Tripathi v Ramchand v Hari Laxman*, I L R 34 Bom. 575, followed. *KARSA GOBHAT v BHARVA JODAS* (1915)

Execution of decree—Interest payable by instalments—Payment of instalments not certified—Limitation—Limitation Act (IX of 1908) Schedule I, Article 18(2) The effect of Order XXI, rule 2, is that—made on

as inconsistent decree but such—therefore,

as inconsistent decree but such—therefore,

CIVIL PROCEDURE CODE (ACT V OF 1908)—

O. II, r. 2—*contd.*

shortly afterwards sold survey No. 324 to Z, who was a brother of B, joint in estate. After the widow's death, B, a daughter of Z, sued D and Z (another daughter of Z) to recover possession of survey No. 324; but the suit was at her request dismissed. B then having sold the three survey numbers to the plaintiff, the present suit was brought against the two daughters, and D and Z, to recover possession of the three survey numbers. The lower Courts dismissed the suit on the preliminary ground that since B omitted to sue in respect of survey numbers 403 and 404 in the first suit, the plaintiff was debarred from preferring his claim to those numbers in the present suit. The plaintiff having appealed, *Held*, that the suit was not barred by the provisions of Order II, rule 2 of the Civil Procedure Code inasmuch as the two sets of facts which required to be proved in both suits in order to enable the plaintiff to succeed were different sets of facts, and the causes of action accordingly were different. *Sore Valad Khushal v. Bhaniswar* (1915) I. L. R. 40 Bom. 351

2. Partition—Separate

suits for property in different districts—Cause of action. The plaintiff, a member of a joint Hindu family, brought a suit for partition of certain property in the district of Solapur. He admitted that he was not in possession of this property, and paid an *ad valorem* court-fee on his plaint. This suit was settled by a compromise. Subsequently the plaintiff brought a separate suit in Allahabad for partition of some of the joint-family property situated in that district; but in this suit he alleged that he was in joint and undivided possession and paid a court-fee of Rs. 10 as on an ordinary partition suit. *Held*, that the omission of the Allahabad property from his suit in Solapur was not a bar to the plaintiff's second suit and that the case did not fall within Order II, rule 2, of the Code of Civil Procedure. *Mansa Ram Chakraborty v. Ganesh Chakraborty*, 16 Indian Cases, 383, *Ukha v. Daga*, I. L. R. 7 Bom. 182, and *Subba Rao v. Rama Rao*, 8 Mad. H. C. R. 376, referred to.

3. Omission to sue for a portion of claim—Subsequent suit for that portion, *Held*, that the plaintiff sued for the possession of a holding consisting of a homestead and arable lands attached thereto. He had previously sued for his possession of that portion of the holding only which included the homestead on the allegation that the defendant had dispossessed him of the homestead. This suit was dismissed. *Held*, that as it appeared from the evidence in this case that plaintiff had been dispossessed of the arable land at the same time as the homestead, the whole suit was barred. The plaintiff having in the previous suit omitted to sue for a portion of his claim, namely, for the arable lands could not under O. II, r. 2 of the Code of Civil Procedure be permitted to

3. Omission to sue for a portion of claim—Subsequent suit for that portion, *Held*, that the plaintiff sued for the possession of a holding consisting of a homestead and arable lands attached thereto. He had previously sued for his possession of that portion of the holding only which included the homestead on the allegation that the defendant had dispossessed him of the homestead. This suit was dismissed. *Held*, that as it appeared from the evidence in this case that plaintiff had been dispossessed of the arable land at the same time as the homestead, the whole suit was barred. The plaintiff having in the previous suit omitted to sue for a portion of his claim, namely, for the arable lands could not under O. II, r. 2 of the Code of Civil Procedure be permitted to

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

contd.

O. II, r. 2—*contd.*

sue for them subsequently. *Jibunt Nali Khan v. Shib Nali Chakraborty*, I. L. R. 8 Cal. 819, and *Pillay Raja v. Sanyal Roy*, I. R. 12 I. A. 116 : s. c. I. L. R. 8 Mad. 520, distinguished. *Kali Kumar Choudhary v. Aslam* (1914).

O. III, r. 4—

See VAKATNAMA

I. L. R. 43 Cal. 884

O. V, rr. 12, 17; O. IX, r. 13—

See SUMMONS, SERVICE OF.

I. L. R. 43 Cal. 447

O. VIII, r. 5—

See EX PARTE DECREE.

I. L. R. 43 Cal. 1001

O. IX, r. 2—Dismissal of suit—*Appel.* *Held*, that no appeal lies from an order dismissing a suit under Order IX, rule 2 of the Code of Civil Procedure on the ground that summons had not been served on the defendants in consequence of the failure of the plaintiff to deposit the requisite court-fee for such service. *Lucky Churn Chowdhry v. Budur-un-nisa*, I. L. R. 9 Cal. 627, *Parbat v. Jooli Kapri*, 20 Indian Cases, 1, followed. *Lachmi Narain v. Daram Lal* (1916)

I. L. R. 38 All. 357

O. IX, r. 9; O. XLIII, r. 1 (c)—*Application by judgment-debtor under O. XXI, r. 90 to set aside sale—Dismissal for default—Application for restoration, rejection of—Order if appealable—Application to set aside sale, if "suit."* O. IX, r. 9 of the Civil Procedure Code is applicable to applications for setting aside sales which have been dismissed for default. *Digan Nichea Bibee v. Hemant Kumar Ray*, 19 C. W. N. 758, and *Safdar Ali v. Kishun Lal*, 12 C. L. J. 6, relied on. An application to set aside a sale is a proceeding which may terminate in an adjudication such as its reference to in s. 2 of the Civil Procedure Code, and if the question had been *res integra*, the Court would have held that it was a suit within the meaning of O. XLIII, r. 1, cl. (c). *Charu Chandra Ghose v. Chandi Charan Ray Chowdhury*, 19 C. W. N. 25, referred to. *Bhuvan Bhanu Nag Mazumdar v. Dhirendra Nath Banerji* (1916)

20 C. W. N. 1203

O. XI, r. 2—

See INTERLOCUTORIES.

I. L. R. 43 Cal. 300

O. XI, r. 21—Procedure—Plaintiff under suspicion of suppressing documents relating to the matter at issue—Dismissal of suit. Where a plaintiff had given the Court strong grounds for believing that he was keeping out of the way documents which would throw light on the subject matter of the suit, but there had been no order made for discovery or inspection of documents, it was held that the Court was not justified in dis-

CIVIL PROCEDURE CODE (ACT V OF 1908)

—contd.

O. XLVII, r. 7—*contd.*

been made out for interference on a question of fact, the reference was discharged. *KATAN BEPARI v. HIRA LAL SARKAR* (1916)

20 C. W. N. 1110

O. XLVII, r. 8—*Decree of Division Bench of High Court of two judges found erroneous giving plaintiff more than he claimed—Application for amendment before one of them—Jurisdiction of single Judge to amend decree—Court in granting application for review, if bound to re-hear whole case—Re-hearing of case by single Judge without authority from Chief Justice—Jurisdiction. An application for amendment of a decree made in favour of the plaintiff by a Division Bench of the High Court of two Judges was moved by some of the defendants before one of them (the other Judge having left the Court) and a Rule was issued on the plaintiff to show cause why the decree should not be set aside or amended, or why such other order should not be made as might seem fit, on the ground that the decree purported to give plaintiff a relief not claimed by him. The Judge made the Rule absolute, and then in terms of r. 8, O. XLVII, C. P. C. proceeded to re-hear the case with the result that the judgment and decree of the Division Bench were amended. The plaintiff appealed against this last decision. *Held*, (Per JENKINS C. J. and N. R. CHATTERJEA J.) that in the absence of an order by the Chief Justice authorising the learned Judge alone to sit for the hearing of the case, his decision was without jurisdiction. The case thereafter was heard before the Regular Bench, the Judges whereof refused to re-hear the whole case, and concurring themselves to the point of amendment only passed a decree amending the judgment and decree. Some of the defendants having applied for review of this last decree, on the ground that the learned Judges should have reheard the whole appeal, *held*, that the decree of the Division Bench stood amended, as soon as the Rule to amend it was made absolute, and all subsequent proceedings were superfluous. That as the last decree of the High Court only affirmed that order, it was not necessary to set it aside. *Per MOOKERJEE J.* R. 8 of O. XLVII of the Civil Procedure Code clearly leaves it optional with the Court to determine whether, when a review is granted, the case should be reopened in part or in its entirety. *GOUR SUNDAR BHOWMIK v. RAHAT RAJ BHOWMIK* (1916)*

20 C. W. N. 1165

O. XLVIII, r. 9—*Review of judgment—Second application for review—Practice. Sample:*

that there is nothing in the Code of Civil Procedure which prevents a second application for review being made after a previous application for review has been made and rejected. *Gobinda Ram Mondal v. Bhola Nath Bhutta, I. L. R. 15 Cal. 432*, referred to. *PATIA v. MATURIA PRASAD* (1916)

I. L. R. 38 All. 280

Sch. II, cls. 17, 20—*Award—Application to file an award on reference made out of*

Sch. II, para. 21; O. XLIII, r. 1—*Arbitration—Application to file an award made out of Court—Application granted ex parte—Refusal to set aside ex parte order—Appeal. Held*, that an appeal will lie against an order rejecting an application to set aside an *ex parte* decree passed under para. 21 of the second Schedule to the Civil Procedure Code, 1908. *Nihal Singh v. Kishan Singh* (1916)

I. L. R. 38, All. 85

Ram Ukar Pandey v. Acharya Nath Pandey (1915)

CIVIL RULES OF PRACTICE.

r. 161 (a)—

*Fixing of six months for applying for execution in Court to which decree is sent for execution—Object of the rule—Execution application after six months not the essence of the rule—Civil Procedure Code (Act V of 1908), s. 24, c. (1) (b)—Right of District Court to recall a case sent to a Subordinate Court for execution. R. 161 (a) of the Civil Rules of Practice which enacts that "if after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the transfer, apply for the execution thereof, the Court to which the decree has been sent shall certify the fact that no application for execution has been made to the Court which passed the decree and shall return the decree to that Court" is in the nature of instruction or direction to the Court to return the papers to the decree-holder within six months to execute the decree. A violation of this rule does not render the proceeding taken, as in this case after six months after transmission, void *ab initio*. The rule is only directory and not mandatory, and the time mentioned is not of the essence of the rule. *Calder v. Pictell, 2 C. P. D. 562*, followed. Where a decree is sent to a District Court for execution by another Court and the District Court transfers the decree for execution to a Subordinate Court, the*

COMPANIES ACT (VI OF 1882)—*contd.*

s. 61—*contd.*

put on the list of contributors, he is liable for all those matters in respect of which he may be charged in the event of the company being wound-up, that is to say, to the extent of his original share held in the company which remains unpaid he is liable to contribute to the assets of the company, for payment of the debts due to creditors and the expenses of the winding-up under s. 61 of the Indian Companies Act, 1882. He is therefore liable in respect of unpaid calls, even though, as against the company the realisation of such calls may have become barred by limitation. *Sornaby Jansetty v. Ishwara Ayyar v. Siva Subramania Mudaliar I. L. R. 31 Mad. 66*, followed. *Jaganmatti Prasad v. U. P. Flour and Oil Mills Company, Limited. I. L. R. 38 All. 347*

s. 169—*Civil Procedure Code, 1908. O. XXI, r. 58 and 63—Appeal.* The right of appeal under the provisions of s. 169 of the Companies Act (VI of 1882) is co-extensive with the right of appeal conferred by the Code of Civil Procedure. In the liquidation proceeding of the Indian Exchange Bank a certain firm was directed by the Additional Judge of Lahore to pay a certain sum as a contribution for execution, when another person put in an objection to the effect that he was the sole proprietor. This order was sent to the District Judge of Agra for execution. When another person put in an objection to the effect that he was the sole proprietor of the firm. The District Judge declined to consider this objection. *Held*, that no appeal lay from the Judge's order, inasmuch as it was under O. XXI, r. 36, the objection being under O. XXI, r. 58. *Saxti Lal v. The Indian Exchange Bank (1916)*

COMPANIES ACT (VII OF 1913).
ss. 2 (3), 3 (3), 171, 215, 232—
See LIQUIDATOR. I. L. R. 43 Cal. 586
s. 207—*Voluntary liquidation—Decree passed against company prior to liquidation—Stay of execution—Jurisdiction.* A decree had been obtained against a company which subsequent to the passing of the decree went into voluntary liquidation. The decree-holder applied for execution of the decree which was granted by the Court of first instance. On appeal, the District Judge ordered stay of execution. *Held*, that the District Judge had no jurisdiction to stay execution. Under the Indian Companies Act the only Court that could stay execution was the High Court. *Held*, further, that s. 207 of the Indian Companies Act is no bar by itself to the progress of execution unless and until an order has been obtained from a Court having jurisdiction under the Companies Act, either for winding up or for stay of proceedings. *Surya Bhan v. Boot and Footwear Factory, Agra, 1916* I. L. R. 38 All. 407

COMPANY.
See COMPANIES ACT (VI OF 1882), *supra*.
I. L. R. 40 Bom. 134

COMMON MANAGER—*contd.*

Code (Act V of 1908) s. 141 and O. XL, r. 1. The 1908 are wider than the corresponding s. 502 of the Civil Procedure Code of 1882 and do not provide that the appointment of a receiver should be confined to a suit. An application for the appointment of a Common Manager under s. 93 of the Bengal Tenancy Act is an original proceeding contemplated in s. 141 of the Civil Procedure Code to which the procedure under O. XL, r. 1, seems to be applicable. *Thakur Prasad v. Fakirulla, I. L. R. 17 All. 106*, followed. The relief of an aggrieved party to such an order is by way of an appeal and not by an application for revision. *Asadati Chowdhury v. Mahmood Hossain Chowdhury (1916)* I. L. R. 43 Cal. 986

COMPANIES ACT (VI OF 1882).

ss. 58, 147—*Liquidation—Last of contributors—Rectification of register of shareholders—Transfers signed by transferor and transferee and lodged before winding up of the Company—Notice of the Company in approving of the transfer—Transferee's name not registered, effect of—No default, or unnecessary delay, or absence of sufficient cause in dealing with shares—Liability of transferee as contributor.* The applicant, a shareholder in the Indian Specie Bank, Ltd., sold some of his shares to the respondents by various transfers which were lodged with the Company for registration. The Company, however, went into liquidation before the transfers were in due course approved of by the Board of Directors. According to the practice observed by the Company, transfers lodged up to the end of the previous week were placed before the Board of Directors at their meeting in the following week. The Company went into liquidation on the 29th of November 1913. At a meeting of the Board of Directors held on the previous day, the transfers lodged in the previous week up to the 22nd of November only were considered. The transfers in dispute were lodged with the Company between the 25th and 28th of November 1913. The applicant was accordingly placed by the liquidator on the list of contributors in Schedule A for the shares which stood in his name on the 29th of November 1913. The applicant contended that the register of shareholders should be rectified by the Court under ss. 58 and 147 of the Indian Companies Act (VI of 1882) by substituting the names of the respondents as transferees in place of his own name. *Held*, that as the applicant had not proved that there was either absence of sufficient cause, or default, or unnecessary delay on the part of the Company in dealing with the transfers, the register of shareholders could not be rectified. *Sornaby Nussur-waxi v. C. A. Patwardhan (1915)*
I. L. R. 40 Bom. 134
ss. 61, 125, 151—*Company—Winding up—Contributory—Liability of contributory for calls.* Once a member of a Company is upon the list of contributors, unless he succeeds in showing as against the liquidator that he should not have been

COMMON MANAGER—concl'd.

Code (Act V of 1908) s. 141 and O. XL, r. 1. The terms of O. XL, r. 1 of the Civil Procedure Code of 1908 are wider than the corresponding s. 502 of the Civil Procedure Code of 1882 and do not provide that the appointment of a receiver should be confined to a suit. An application for the appointment of a Common Manager under s. 93 of the Bengal Tenancy Act is an original proceeding contemplated in s. 141 of the Civil Procedure Code to which the procedure under O. XL, r. 1, seems to be applicable. *Thakur Prasad v. Fakirulla, I. L. R. 17 All. 106*, followed. The relief of an aggrieved party to such an order is by way of an appeal and not by an application for revision. *ASADALI CHOWDHURY v. MAHOMED HOSSAIN CHOWDHURY (1916)* . . . **I. L. R. 43 Calc. 986**

COMPANIES ACT (VI OF 1882).

— ss. 58, 147—*Liquidation—List of contributories—Rectification of register of shareholders—Transfers signed by transferor and transferee and lodged before winding up of the Company—Practice of the Company in approving of the transfer—Transferee's name not registered, effect of—No default, or unnecessary delay, or absence of sufficient cause in dealing with shares—Liability of transferee as contributory.* The applicant, a shareholder in the Indian Specie Bank, Ltd., sold some of his shares to the respondents by various transfers which were lodged with the Company for registration. The Company, however, went into liquidation before the transfers were in due course approved of by the Board of Directors. According to the practice observed by the Company, transfers lodged up to the end of the previous week were placed before the Board of Directors at their meeting in the following week. The Company went into liquidation on the 29th of November 1913. At a meeting of the Board of Directors held on the previous day, the transfers lodged in the previous week up to the 22nd of November only were considered. The transfers in dispute were lodged with the Company between the 25th and 28th of November 1913. The applicant was accordingly placed by the liquidator on the list of contributories in Schedule A for the shares which stood in his name on the 29th of November 1913. The applicant contended that the register of shareholders should be rectified by the Court under ss. 58 and 147 of the Indian Companies Act (VI of 1882) by substituting the names of the respondents as transferees in place of his own name. *Held*, that as the applicant had not proved that there was either absence of sufficient cause, or default, or unnecessary delay on the part of the Company in dealing with the transfers, the register of shareholders could not be rectified. *SORABJI NUSSERWANJI v. C. A. PATWARDHAN (1915)*

I. L. R. 40 Bom. 134

— ss. 61, 125, 151—*Company—Winding up—Contributory—Liability of contributory for calls.* Once a member of a Company is upon the list of contributories, unless he succeeds in showing as against the liquidator that he should not have been

COMPANIES ACT (VI OF 1882)—concl'd.

— s. 61—concl'd.

put on the list of contributories, he is liable for all those matters in respect of which he may be charged in the event of the company being wound-up, that is to say, to the extent of his original share held in the company which remains unpaid he is liable to contribute to the assets of the company, for payment of the debts due to creditors and the expenses of the winding-up under s. 61 of the Indian Companies Act, 1882. He is therefore liable in respect of unpaid calls, even though, as against the company the realization of such calls may have become *Sorabji Jamsetji v. Ishwar I. L. R. 20 Bom. 354*, and *Vaidiswara Ayyar v. Siva Subramania Mudaliar I. L. R. 31 Mad. 66*, followed. **JAGANNATH PRASAD v. U. P. FLOUR AND OIL MILLS COMPANY, LIMITED (1916)** **I. L. R. 38 All. 347**

— s. 169—*Civil Procedure Code, 1908, O. XXI, r. 58 and 63—Appeal.* The right of appeal under the provisions of s. 169 of the Companies Act (VI of 1882) is co-extensive with the right of appeal conferred by the Code of Civil Procedure. In the liquidation proceeding of the Indian Exchange Bank a certain person described as the proprietor of a certain firm was directed by the Additional Judge of Lahore to pay a certain sum as a contributory. This order was sent to the District Judge of Agra for execution, when another person put in an objection to the effect that he was the sole proprietor of the firm. The District Judge declined to consider this objection. *Held*, that no appeal lay from the Judge's order, inasmuch as it was under O. XXI, r. 36, the objection being under O. XXI, r. 58. **SANTI LAL v. THE INDIAN EXCHANGE BANK (1916)** **I. L. R. 38 All. 537**

COMPANIES ACT (VII OF 1913).

— ss. 2 (3), 3 (3), 171, 215, 232—

See LIQUIDATOR **I. L. R. 43 Calc. 586**

— s. 207—*Voluntary liquidation—Decree passed against company prior to liquidation—Stay of execution—Jurisdiction.* A decree had been obtained against a company which subsequent to the passing of the decree went into voluntary liquidation. The decree-holder applied for execution of the decree which was granted by the Court of first instance. On appeal, the District Judge ordered stay of execution. *Held*, that the District Judge had no jurisdiction to stay execution. Under the Indian Companies Act the only Court that could stay execution was the High Court. *Held*, further, that s. 207 of the Indian Companies Act is no bar by itself to the progress of execution unless and until an order has been obtained from a Court having jurisdiction under the Companies Act, either for winding up or for stay of proceedings. **SURAJ BHAN v. BOOT AND EQUIPMENT FACTORY, AGRA, 1916** **I. L. R. 38 All. 407**

COMPANY.

See COMPANIES ACT (VI OF 1882), ss. 58, 147 **I. L. R. 40 Bom. 134**

COMPANY—*concl.*

See COMPANIES ACT (VI of 1882) ss 61,
125, 151 I. L. R. 38 All. 347

See INCORPORATED COMPANY
I. L. R. 43 Calc. 790

COMPENSATION.

See MADRAS ESTATES LAND ACT (I of
1908), s 6 AND SUB S (6) AND (8)
I. L. R. 39 Mad. 944

See MUNICIPAL LAW
L. R. 43 I. A. 243

See SPECIFIC MOVABLE PROPERTY
I. L. R. 39 Mad. 1

See TRANSFER OF PROPERTY (ACT IV of
1882), s 83 I. L. R. 39 Mad. 579

COMPLAINANT.

resulting before hearing, effect of—

See CRIMINAL PROCEDURE CODE (ACT V
of 1898), s 345
I. L. R. 39 Mad. 946

COMPLAINT.

See FALSE INFORMATION
I. L. R. 43 Calc. 173

See PENAL CODE (ACT XLV of 1860),
s 498 I. L. R. 38 All. 276

COMPOSITION OF OFFENCE.

See COMPOUNDING OF OFFENCE
See CRIMINAL TRESPASS
I. L. R. 43 Calc. 1143

in revision—

See CRIMINAL PROCEDURE CODE (ACT V
of 1898), s 439
I. L. R. 39 Mad. 604

COMPOUND INTEREST.

See TRANSFER OF PROPERTY ACT (IV of
1882), s 83 I. L. R. 39 Mad. 579

COMPOUNDING CRIMINAL CASE.

See AGREEMENT 20 C. W. N. 943

COMPOUNDING OF OFFENCE.

See CRIMINAL PROCEDURE CODE (ACT V
of 1898), s 345
I. L. R. 39 Mad. 946

See CRIMINAL PROCEDURE CODE (ACT V
of 1898), s 439
I. L. R. 39 Mad. 604

COMPROMISE.

See CIVIL PROCEDURE CODE (1908), O
XXIII, r 3 I. L. R. 38 All. 75

See CONTRIBUTION
I. L. R. 38 All. 237

See HINDU LAW—WIDOW
I. L. R. 38 All. 679

COMPROMISE—*concl.*

See MISTAKE I. L. R. 43 Calc. 217

See REGISTRATION ACT (XVI of 1908),
ss 17, 49 I. L. R. 38 All. 366

See TRANSFER OF PROPERTY (IV of 1882),
s 6 I. L. R. 38 All. 107

between co-executors, validity of—

See HINDU LAW—WILL
I. L. R. 39 Mad. 365

decrea on—

See CIVIL PROCEDURE CODE (ACT V of
1908), O XXII, r 7
I. L. R. 39 Mad. 853

joint bond, as part of—

See CIVIL PROCEDURE CODE (ACT XIV of
1882), s 462 I. L. R. 39 Mad. 409

on behalf of minor, without leave
of Court—

See CIVIL PROCEDURE CODE (ACT XIV of
1882), s 462 I. L. R. 39 Mad. 409

Compromise, if not
recorded, effect of—Consent decree—Appeal—Civil
Procedure Code (Act V of 1908), s 36, cl (3); O
XXIII, r 3, O XLIII, r 1, cl (m) A (consent)
decree under r 3 of O XXIII of the Civil Proce-
dure Code can be passed only after there has been
an order that the compromise be recorded. This
is not a mere matter of form, as the aggrieved
party has a right of appeal against this order, and
a 96, cl (3) of the Code is not otherwise a bar to
an appeal from such a decree. *PABAN SARDAR v.*
BRUPENDRA NATH NAG [1913]
I. L. R. 43 Calc. 85

COMPULSION OF LAW.

payment under—

See DEPOSIT IN COURT
I. L. R. 43 Calc. 269

CONFESSION AND STATEMENT.

difference between—

See CRIMINAL PROCEDURE CODE (ACT
V of 1898), s 164
I. L. R. 39 Mad. 977

CONFIDENTIAL COMMUNICATIONS.

test of—

See EASEMENTS ACT (V of 1882), s 15
I. L. R. 39 Mad. 364

CONSENT DECREE.

See COMPROMISE I. L. R. 43 Calc. 85

CONSIDERATION.

failure of—

See CONTRACT ACT (IX of 1872), ss 20,
65 I. L. R. 40 Bom. 638

CONSIDERATION OF HUNDI.

See HUNDI SUIT ON
I. L. R. 40 Bom. 473.

CONTEMPT OF COURT.

See ANONYMOUS COMMISSIONER
I. L. R. 43 Cal 685
See LEGAL PRACTITIONERS ACT (XIII)
I. L. R. 39 Mad. 1045.
CONTINGENT BEQUEST IN FUTURE.
See HINDU LAW—WILL
I. L. R. 43 Cal. 432.

CONTRACT.

See CONSTRUCTION OF CONTRACT
I. L. R. 40 Bom. 301
See CONTRACT TO LEASE OR BORROW
I. L. R. 40 Bom. 517
See FORWARD CONTRACT
I. L. R. 40 Bom. 517
See GUARDIAN AND MINOR
I. L. R. 38 All. 435
See IMPOSSIBLE CONTRACT
I. L. R. 40 Bom. 529
See SPECIFIC PERFORMANCE
breach of, by labourer or masonry—
See MARRIAGE PLANTERS LABOUR ACT (I)
OR 1903, ss 24 35
I. L. R. 39 Mad. 889,
construction of—
See SALE OF GOODS
I. L. R. 43 Cal. 305,
for monthly deliveries—
See SALE OF GOODS
I. L. R. 43 Cal. 305,
illegality of—
See CONTRACT ACT (IX OF 1872), ss
56 (2) AND 65
I. L. R. 40 Bom. 570,
rescission of—
See S.A.T.
I. L. R. 43 Cal. 790

Calcutta Baled Jute Association's contract—Effect of, Sale of goods—
London between Calcutta purchaser and London pur-
chaser, whether binding on Calcutta seller R. D &
Co., a firm carrying on business in Calcutta as
bales of jute, sold 500 bales of jute to E. D. S. &
Co. for shipment to London The contract con-
tained a clause in writing, known in the export
trade as a "Home Guarantee," that is, a clause
by which the Calcutta seller guaranteed the weight,
condition and quality at the port of destination
E. D. S. & Co. sold the jute to a London buyer,
who claimed an allowance for inferiority of quality,
and upon an arbitration in London an award was

CONSTRUCTION OF DOCUMENTS—contd.

cuted by the parties of even date with the sale
deed refused the suggestion that any of the
parties to the sale deed held any religious
scruples against the payment or receipt of interest
on money lent, or that when intending to create
a mortgage they would have adopted special
methods of conveying to conceal the fact that
interest for the loan was in fact to be given and
received With reference to a remark of Lord
Gowen, I. C. in *Alderson v. Hine*, that
"I think a Court after the lapse of 30 years
ought to require cogent evidence to induce it to
hold that an instrument is not what it purports
to be," their Lordships, commenting on the facts
that the period of 10 years fixed in the present
case for repurchase terminated in 1853 that the
suit was instituted on the 5th of October, 1907, 41
years after the lapse of that period, that the
judgment appealed from was delivered on the 11th

an instrument of oppression, is discreditable to
any judicial system, and every effort should be
made to correct the abuse" *Jindva Bhow v*
Wandoo Din (1916)
I. L. R. 38 All. 670
State of mortgage—
State with option of re purchase—Transfer of Property
Act (IV of 1882), s 58, cl (c) The plaintiffs
mortgaged in 1899 with the defendants 82 fields
for Rs. 8,000, the rate of interest agreed upon being
8 per cent per annum In 1904, the parties made
up accounts under the mortgage, and of other
transactions, and the plaintiffs were found indebted
to the defendants for Rs. 13,000 To pay the
amount the plaintiffs sold to the defendants 20 out
of 92 fields mortgaged The sale deed contained
the provision that it within the period of 20 years
the plaintiffs repaid Rs. 13,000 in one lump sum or
in instalments the defendants should recover the
lands to the plaintiffs On the same day the plan
tiffs executed to the defendants a permanent lease
of the lands sold at a fixed annual rental of Rs.
412 8 0 The plaintiffs alleged that the trans-
action of 1904 was a mortgage, and sued to redeem
the same in 1911, on accounts being taken under
the Dekkhan Agriculturists' Relief Act *Hid.*
that the transaction in dispute was not a mortgage,
but a sale with an option to the plaintiffs to re-
purchase *NARAYAN KAKKINAWA v VENGASWAMI*
I. L. R. 40 Bom. 278

CONSTRUCTION OF STATUTES.

Interpretation—Frye
amble Though the preamble of an Act does not
control any plain enactment which follows it, it
may be a most useful guide when a question of

CONTRACT—contd.

relinquished the share to G who was and continued in possession but no conveyance was executed to give effect to this transaction : *Held*, (in a suit by the purchaser at the rent sale to eject G), that though a mere admission or disclaimer cannot operate to pass title to property where a conveyance is required under the law to transfer title, here G could have sued C for specific performance of the contract and G could have successfully resisted a suit to recover possession by C. That by the application of the equitable doctrine of part performance, C was precluded from setting up any title against G and had no subsisting right to the share at the date of the rent suit. *Walsh v. Lonsdale, L. R. 21 Ch. D. 49, Puchha Lal v. Kunj Behari Lal, 18 C. W. N. 445, and Mohanmmed Musas v. Aghore Kumar Ganguli, L. R. 42 I. A. 1 : I. T. R. 42 Cal. 801, relied on, Jadunath Poddar v. Rup Lal Poddar, 4 C. L. J. 23 : s. e. 10 C. W. N. 650, Odey Koorur v. Ladoo, 13 Moo. I. A. 585, and Dharam Chand Baid v. Mayji Sahu, 16 C. L. J. 436, distinguished. *Held*, further, that the purchaser could in respect of contract of purchase made by his debtor with a stranger. That a re-mand order by the High Court directing a trial upon the issue whether C had a subsisting interest in the property covered an enquiry as to whether C had lost his interest in the property by the operation of the equitable doctrine of part performance. KUMARPRASAD NATH CHATTERJEE v. SOHAYTON GUHA (1915)*

4. Bond signed by
defendant only, and registered, suit upon. A con-
tract in writing in this country does not neces-
sarily imply that the document must be signed by
both the parties thereto. *Apyi Bapuji v. Nil-
kanth*, 3 Bom. L. R. 667, *Ramasami Chetti v. Selva-
noda Chetti*, 1 Mad. L. J. 737, *Girish Chandra v.
Kunjo Behary*, 1 L. R. 35 Cal. 683; s. c. 12 C. W.
N. 6928, *Ambadayani Pandaravva v. Vaguram*, 1 L.
R. 1258, *Kolappa v. Vallur Zeminad*, 1 L.
R. 25 Mad. 50, *Zeminad of Vizianagaram v. Behara
Suryanarayana*, 1 L. R. 25 Mad. 587, and *Samey
Kolappa v. Venkata Narasimham Naidu*, 11 Mad. L.
J. 125, referred to. *Chellappanoo Chowdhuri v.
Banga Behari Sen* (1915). 20 C. W. N. 408

5. Conditional pro-

5. Conditional provision for the plaintiff by purchase of immovable property on condition of her living with and performance of condition—Suit against heirs of promisor to recover village purchased for plaintiff by relative, a wealthy and childless Karm—Limitation—Representation—Practice of Privy Council—Grant of special leave to cross-appeal. This appeal arose out of a suit brought by the appellant for possession of a village called Repudi which had belonged to her great-aunt, a wealthy, childless and widowed Karm, and to which on her death in 1899, the three defendants had in litigation between themselves been declared to be entitled in equal shares as her heirs. The appellant had been

awarded the goods had been invoiced back to the
sellers; and that in terms of the contract R. D. &
Co. were bound by the award. *Held*, that the
clause in writing, that is to say the 'home guaran-
tee,' does not mean that a London award in a
submission by the Calcutta purchaser and the
London purchaser in accordance with the rules and
conditions of the London Association contract of
1913, would be binding in a dispute between the
Calcutta seller and the Calcutta buyer. To make
such an award binding upon a total stranger to the
London submission there should be a clear and
unambiguous agreement to that effect. *Held*, also,
that although it may be correctly contended that
any dispute about quality, between the Calcutta
seller and the Calcutta buyer may be validly re-
ferred to arbitration in London in accordance to
that clause, the meaning of the clause cannot be
extended so as to make an award between the
Calcutta purchaser and the London purchaser
binding upon the Calcutta seller. *Kam Dett*
Kamrassur Dass v. B. D. Sassoon & Co. (1915).
I. L. R. 43 Cal. 77.

2. Trafficking in
officers—Official corruption—Contract for return of
money paid to Azar to secure appointment as peon—
Suit to enforce such contract, maintainability of—
Public policy—Contract Act (IX of 1872), ss. 23,
65. The sale of a recommendation, nomination or
influence in procuring a public office is illegal
and void, for trafficking in offices would inevitably
tend to official corruption; and the Court will not
assist a party who has entered into a contract
tainted by moral turpitude, both sides being parti-
cipants in the transaction. *2 Mos. & P. 467; 5 H. R. 662, followed. A suit to*
enforce a contract for the return of money paid to a
peon for the plaintiff's son is not maintainable.
But Wylt v. Xansa Nagar, 1. L. R. 10 Bom. 152,
C. R. 243, discussed and distinguished. Such an
agreement is void ab initio, its object being opposed
to public policy within the meaning of s. 23 of the
Indian Contract Act: while s. 65 thereof applies to
(ii) or made void by supervening circumstances.
Butshi Das v. Nahu Das, 1 C. L. J. 267, and
Gutbchand v. Puri Bai, 1. L. R. 33 Bom. 411, con-
sidered inapplicable. Laxmi Govachman v. Hira-
Lat Bost (1915). *I. L. R. 43 Cal. 115*

3. Part performance, if may be invoked by stranger to—Relinquishment of share in tenure without registration—decided but for consideration by purchaser out of possession to person in possession—Remand order, scope of. Where a permanent tenure having been sold in execution of a decree for rent obtained against G, the question was whether G at the date of the sale had a subsisting interest in the tenure, so that (if he had) certain under-tenures held by G were not touched by the sale, and it appeared that G having acquired a share in the tenure at an execution sale, had subsequently for consideration

CONTRACT ACT (IX OF 1872).
 Section 25. A contract is voidable at the option of the promisee if it is induced by fraud. If the fraud is of such a nature as to render the contract void, it is void ab initio.

CONTRACT ACT (IX OF 1872).
 Section 26. A contract is void if it is made with one party incapable of understanding its nature and effect, or if it is made with a party who is under a legal disability, or if it is made with a party who is not of legal age.

CONTRACT ACT (IX OF 1872).
 Section 27. A contract is void if it is made with one party incapable of understanding its nature and effect, or if it is made with a party who is under a legal disability, or if it is made with a party who is not of legal age.

CONTRACT ACT (IX OF 1872).
 Section 28. A contract is void if it is made with one party incapable of understanding its nature and effect, or if it is made with a party who is under a legal disability, or if it is made with a party who is not of legal age.

CONTRACT—could.

I. L. R. 43 Cal. 77

2. Travelling in offices—Official corruption—Contract for return of

55. The sale of a recommendation, nomination or influence in procuring a public office is illegal and void, for trafficking in offices would inevitably assist a party who has entered into a contract tainted by moral turpitude, both sides being participants criminals, in pari delicto. *Tappenden v. Randall*, 2 Bos. & P. 467; 5 R. R. 662, followed. A suit to enforce a contract for the return of money paid to a person for the plaintiff's son is not maintainable. *Bai Vilji v. Anasa Nagar*, I. L. R. 10 Bom. 152, referred to. *Richakully v. Narayanaappa*, 2 Mad. H. C. R. 243, disapproved and distinguished. Such an agreement is void *ab initio*, its object being opposed to public policy within the meaning of s. 23 of the Indian Contract Act: while s. 65 thereof applies to an agreement subsequently (i) found to be void, (ii) or made void by supervening circumstances. *Baskhi Das v. Nattu Das*, I C. L. J. 261, and *Gulabchand v. Fuli Bai*, I. L. R. 33 Bom. 411, considered inapplicable. *Lendu Cochinman v. Hiratal Bose* (1915). I. L. R. 43 Cal. 115.

3. Part performance, if may be invoked by stranger—

[illegible]

SONATON GUHA (1915) . 20 G. W. N. 149

4. *defer*

both the parties thereto. *Ayayi Bapuji v. Nil*
Chetti, 1 Mad. T. J. 733, Girish Chandra v. Selva-
Kanta, 3 Bom. L. R. 667, Ramasami Chelli v. Nil
Chetti, 1 Mad. T. R. 35 Cal. 683 : s. c. 12 C. W.
R. 25 Mad. 50, Zemindar of Vizianagram v. Behara
Suryanarayana, 1. T. R. 25 Mad. 587, and Sanyal
Kotappa v. Venkata Narasimham Naidu, 11 Mad. T.
J. 125, referred to. Chettiar v. Choudhury v.
Banga Bhatia Sdn (1915) . 20 C. W. N. 408
Conditional pro-

5.

The appellant had been

CONTRACT ACT (IX OF 1872)—*cond*

s. 20—*could*

mortgage by mortgage in favour of a third party
—*Decd of transfer signed by the mortgagor as a*
—*concurring party, the mortgagor again fraud-*
—*ulently representing to be owner—Transferor and*
—*transferee acting under the belief that the real owner*
—*concurred in the transfer—Failure of consideration*
—*avoidance of contract Under the will of their*
—*father, J E and L M became entitled as tenants*
—*in common to equal moieties of a house at Bla-*
—*gaon in Bombay The third son C was given a*
—*right of residence in the house so long as he lived*
—*in harmony with his brothers and sisters C,*
—*however, fraudulently representing himself to be*
—*his brother, L M, purported to create a mortgage*
—*of a moiety of the said house in favour of the defen-*
—*dant Subsequently the defendant in consideration*
—*of a sum of Rs 1,770 paid to him by the plain-*
—*tiff, transferred the said mortgage in favour of the*
—*plaintiff The plaintiff having insisted that the*

Rani purchased two small properties in her own
name and transferred them after a time to the
appellant In 1893 the Rani purchased Rchpudi
also in her own name though, making no conceal-
ment of her intention that the appellant was over-
tending it to have it but the Rani's delay in trans-
ferring it to her caused unpleasantness, and the
appellant's husband left and went to his own
home Negotiation took place, and eventually
the Rani on 12th October 1893 wrote to the ap-
pellant a letter in which she said, "Rchpudi was
purchased for you alone I shall retain it under
me so long as I am alive and afterwards convey it
to you yourself" Thereafter the appellant and
her husband lived with the Rani until her death
Held (reversing the decision of the High Court),
that the letter was not merely an expression of
intention but a conditional promise by the Rani,
and the promise was accepted and the condition
performed by the appellant and her husband and
there was accordingly a complete contract between
the parties *Mannal v Medga, 4 H L C 1039,*
Maddison v Alderson, L R 8 A C 467, and
Jordan v Brown, 6 H L C 185, referred to and
discussed. *Held*, also that the Rani's dying
declaration constituted a re-affirmation and con-
firmation of the contract, the two effect of the
firming being to declare that Rchpudi was already
the appellant's, and that the Rani knew an oral
bequest to be unnecessary From such a contract
it was not open for those representing the Rani or
her estate to resist from or fail to perform the

KALYANJI HAO : AIR 1916
I. L. R. 39 Mad. 509

CONTRACT ACT (IX OF 1872).
ss. 20 and 65—*Fraudulent represent-*
—*ation and impecuniation by one of the co-debtors of a*
—*decd—Aliaide as to a matter of fact essential to the*
—*agreement—A person fraudulently mortgaging pro-*
—*perty not his own—Mortgage being in good faith*
—*the mortgagor to be owner of property—Transfer of*

Council, the Judicial Committee granted the appli-
cation of the third defendant to be made a res-

See DIFFERENCES
s. 23—

mortgage and the transfer deeds were not executed
by L M but by a forger in his name, sued the
defendant as transferor for return of the purchase
money, as on a total failure of consideration. The
trial Judge applied the maxim "causit emptor"
and dismissed the suit The plaintiff thereupon
appealed *Held*, that the defendant was bound
under s 65 of the Indian Contract Act to repay the
purchase money to the plaintiff inasmuch as both
parties being in the belief that the real owner had
joined in the transfer were under a mistake as to a
matter of fact essential to the agreement which
was, therefore, avoided under s 20 of the Indian
Contract Act *Iskari Atmakuria v Datta*
TRAYA (1916)
I. L. R. 40 Bom. 638

ss. 23, 65—
I. L. R. 40 Bom. 64

See TRANSFERRING IV OFFICES
I. L. R. 43 Cal. 115
1908, s 11, I. L. R. 40 Bom. 614
See CIVIL PROCEDURE CODE (Act V of

CONTRACT ACT IN OF 1872-1911.

544
 1. L. R. 10 Mad. 545
 1. L. R. 10 Mad. 492

August 1914 without contravening any law, or being able to avoid it under a 56 of the Indian Contract Act as having been made unlawful after

when the defendant repudiated the contract (ii) That no implied condition could be read into the contract that it was agreed by the parties that normal freight conditions should continue (iv) That the defendant had committed a technical breach of contract, as the plaintiffs had not proved that they had any intention of shipping 1,000 tons of manganese to Antwerp in September, nor had they suffered any loss on account of non shipment. Before a contract can be broken on the ground that the acts to be done have become impossible the Courts must be very sure that they are physically impossible. Physical impossibility must go much further than mere difficulty or the need to pay exorbitant prices. The latter part of a 56 deals with cases where the acts to be done were at the time the contract was made lawful but a legal prohibition has supervened after the making, but before the performance of the contract, and

L. L. R. 40 Bom. 301

Contract impossible of performance—Freight paid in advance—Export of goods shipped on board the Bill of lading—Shipping orders—Common carrier—Carriers by sea—Private carriers—Carriers Act (III of 1885)—Carriers by sea excluded by the Carriers Act—Loss by way of demurrage. On the last April 1915, the defendant steamer Company entered into an agreement with C. & Co. a firm of freight contractors, whereby the latter chartered

from C. & Co., freight for 2,500 bales of cotton on the said steamer and were given the shipping orders which they presented to the defendant. The plaintiffs put 2,500 bales of cotton on board the steamer and the defendant issued twenty five orders of import of cotton to the latter chartered

made a contract on the 21st July 1914 with the

L. L. R. 40 Bom. 289

s. 56—Performance of contract becoming

Port of Bombay for Antwerp, shipment in September On the 4th of August 1914 war broke out between Great Britain and Germany. On the 7th of August 1914, the Government of India, by a Proclamation duly published in Bombay under the Sea Customs Act prohibited the export from India of ammunition and explosives and all materials used in the manufacture thereof. Under the Sea Customs Act, the Government of India is empowered to prohibit the export of specified articles or things, and the specification must be exact and

nomination. It being expressly specified in the last mentioned notification in the Government of India issued on the 17th of October 1914 a further notification in supersession of the notification of the 5th of August, by which manganese was amongst other articles specifically prohibited. On the 21st of September 1914, the defendant shipping firm notified in telegraphed to the plaintiffs that owing to force majeure the contract was cancelled. The plaintiffs refused to accept the cancellation and insisted upon the performance of the contract. They subsequently sued the defendant in damages in the sum of Rs 575 or the 7,007 The defendant pleaded (i) that the export of manganese from India was prohibited by the Government of India on the 5th of August 1914 published in Bombay on the 21st of August 1914. It became impossible to perform the contract during the month of September from Bombay to Antwerp, (ii) that it was an implied condition, and of the essence of the contract, understood by both parties to be, that there should be freight available from Bombay to Antwerp. Held, (i) that

CONTRACT ACT (IX OF 1872) — contd.

55, 56 (L. 65 — contd.)

between Great Britain and Germany. On the 18th August, the plaintiff wrote to the defendants calling upon them to take delivery of waste under the contract. On the 22nd August, the manager of the defendant company replied that on account of the existing political position in India and the fact that the plaintiff had to keep the delivery of waste under contract in suit of war and was (ii) that it had not to perform to subsequent (iii) that assumption. 14th November. 16th December before that

the plaintiff had not to perform to subsequent (iii) that assumption. 14th November. 16th December before that

CONTRACT ACT (IX OF 1872) — contd.

55, 56

date, (iv) that the defendants were entitled to a

return of their deposit under s. 65 of the Indian

Contract Act *Jawon v. Dreyfuss* Consolidated

Sons v. Carr, Parker & Co., Limited, 31 T. L. R.

407, referred to *Textile Manufacturers Co.*

Ltd v. Salomon Brothers (1915)

L. T. R. 40 Bohn, 570

—**Co-owners**—Purchasers of different portions of

land—Attachment for arrears of revenue—

Payment by a purchaser of the whole amount of arrears—

—Said by him for the entire amount against the common

law and the other purchaser—Personal liability of

registered holder only—Landlord's right of the other

purchaser—Joint purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

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Share—Sole purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

Share—Sole purchase of land—Jointly—

and only for contribution and to recover from him

share of revenue payable on account of the pro-

perty in the hands of the first defendant *Sura-*

man Chell v. Mahalingam Sivan, 1 T. L. R. 33

Mad 11, Prangley v. Pankam Hays, 15 T. L. R. 263,

Narain Pat v. Appu, 28 T. L. R. 166, and *Fuller*

Ali v. Gungah Roy, 1 T. L. R. 8 Cal 113, 14

lower Raj v. Panchangam v. Raja Srinivasulu

Romanthalahar, 1 T. L. R. 26 Mad 713 distinguished

Ganapathi Krishna Chandra Rao v. Srinivasa Chari,

25 Mad 1 v. 43, Rajes of Panchuram v. Srinivasa

Amman Ammal v. Amina Pillai Marayana, 1 T. L. R.

33 Mad 15, Mangalamma v. Karayannamma

Ayyar, 17 Mad 1 v. 250, *Mandana Chandra*

Bandu v. Jambhar Karmar, 1 T. L. R. 32 Cal 613,

Alone v. Gauri, 7 T. L. R. 101, referred to

Jagavati Rao v. Sadasayamma Rao (1915)

L. T. R. 39 Mad 785

—**Payment made for another**

—**Obtaining the benefit—Stranger paying off a**

—**Obtaining the benefit—Stranger paying off a**

—**Obtaining the benefit—Stranger paying off a**

—**Obtaining the benefit—Stranger paying off a**

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—**Obtaining the benefit—Stranger paying off a**

55. 81, 82, 83—*couell.*

I. L. R. 40 Nov. 675

1. L. H. 43 Cal. 493

1892

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CONTRACT ACT (IX OF 1872)—*cond.*

s. 139—*cond.*

present case there was a specific appropriation by the depositor when he opened the new account and there were in fact two accounts and not one and the rule in *Clayton's Case*, 1 Mer. 572, did not apply. That it was no duty of the Bank to communicate with the defendant with reference to the opening of the new account which was not contrary to the nature of the defendant's engagement but in accordance with the arrangement made by the defendant with the Bank. *Per Moore* J.—That in the absence of special agreement a guarantor has no right to control the appropriation by Customer or Banker of moneys paid in subject to the qualification that the Banker is bound to deal with the accounts in the ordinary way of business. Any specific direction regarding the appropriation of a deposit must be observed by the Bank. In the present case the agreement between the Bank and the depositor made it impossible for the Bank to apply the deposit in reduction of the overdraft on the first account; consequently the fact that the deposit was not applied did not justify the contention that the Bank was at fault and the surety must be discharged, there was thus no room for the application of the rule in *Clayton's Case*, 1 Mer. 572. That the Bank did not fail in their duty to the defendant when they carried on transactions with his brother under the second account without any agreement between the principal with reference to the contract guaranteed, the surety ought to be consulted and that if there is any alteration which is not obviously either unsubstantial or for the benefit of the surety he is to be the sole judge whether he remains liable. This is substantially in accord with s. 139 of the Indian Contract Act. *Guthrie v. The National Bank or India Ltd. (1916)* 20 C. W. N. 562

1. 180—
See Parthasarathy, I. L. R. 43 Cal. 733
ss. 207, 253 cl. (10)
See Principal and Agent
CONTRACT C. I. F.
I. L. R. 43 Cal. 248

CONTRACT TO LEASE OR BORROW.
See Srinivas Perumanna
I. L. R. 43 Cal. 59

CONTRIBUTION.
See Montague, I. L. R. 38 All. 93
cause of action for—
See Laxminaray, I. L. R. 39 Mad. 288
rule for—
See Contract Act (IX of 1872), ss. 60 and 70.
I. L. R. 39 Mad. 785

CONTRACT ACT (IX OF 1872)—*cond.*
s. 139—Discharge of surety by act of creditor detrimental to surety—Banker, deposit with—Banker must allow specific direction of depo-

from his brother on current account or otherwise

Bank a large sum so guaranteed the defendant brother opened a separate account with the Bank by depositing a certain amount on condition that the Bank would allow him to draw this sum by cheques and not take it in payment of the amount due to them on the guaranteed overdraft account but that any profits of the business carried on by him with the money deposited on the second account would be paid to credit of the overdraft account. The Bank did not inform the defendant sums were transferred from this account to the overdraft account purporting to be profits as ascertained. After this second account came to an end the Bank claimed from the defendant payment of the balance on the overdraft account and a copy of the account of the defendant's brother was supplied to the defendant showing the amount due to the Bank on account of principal and interest as also the second account opened by the defendant's brother. The defendant without disputing his liability assured payments of the money due from his brother *Hind*, that on the facts of the case the defendant was not discharged from his liability to the Bank in consequence of the arrangement made by the Bank with his brother in opening the second account. That the defendant was not entitled to have the account reopened and the Bank entitled to interest after the date mentioned in the agreement of guarantee for payment, at the rate usual on the account but not at any higher rate *Per Barendson C J*—That in opening the second account the Bank did not act uncon-

required him to do but also that the eventual remedy of the surety himself has thereby been impaired, which was not shown to be the case here. That it was not within the power of the Bank to appropriate the amount in the second account to

COSTS—contd.

for account—*Manager, liability of, for costs—Presidency Small Cause Courts Act (XV of 1882), s. 22—Practice.* In the matter of costs, the Court's discretion is to be exercised with special reference to all the circumstances of the case including the conduct of parties. *Sheo Dayl Tewari Choudhury v. Bishunath Tewari Choudhury*, 9 W. R. 67, referred to. If a person takes up the management of another's estate and collects and disburses moneys, he must be ready with his account, and if his failure to perform this obvious duty necessitates a suit, then he must pay the costs. *Collyer v. Dudley*, 3 L. J. Ch. 15, referred to. So, where a manager has deliberately set up a false defence, and on being ordered to render an account, submits a

Shoban Mohan Banerjee, Coryton's Rep. 126, and Hurrinath Rai v. Krishna Kumar Bakhshi, 1 L. R. 14 Cal. 147, referred to. Because in a suit for an account a sum of money less than rupees 1,000 was found due by the defendant, it does not follow that such a suit should have been instituted in the Presidency Small Cause Court, and that the provisions of s. 22 of the Presidency Small Cause Courts Act apply. *SUKUMARI GHOSH v. Gopi Mohan Goswami* (1915) I. L. R. 43 Cal. 190

2. — *Solicitor's lien for costs—Minor—Next friend—Attorney's costs for proceedings undertaken on the next friend's instructions—If neither attorney is entitled to a charge on the minor's property for his costs so incurred—Practice.* Where a suit has been brought by a minor through his next friend for declaration of the infant's title to and possession of property, the attorney is entitled to have a charge declared on the properties for the amount of costs incurred by him and he is entitled to recover this same in a suit. *Shankar*

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C. H. N. Choudhury and Branson v. Appasami, 1 L. R. 17 Mad. 257, referred to. *KUMAR KRISHNA DUTT v. HARI NARAIN GANGULY* (1915)

I. L. R. 43 Cal. 676

3. — *Taxation of costs—*

ficate of the Taxing Master Where the Secretary of State for India is a party to a suit filed in the

COSTS—contd.

all profit costs of the Government Solicitor and brief fees to the Advocate General should be allowed on taxation. *NUSSERWANJI & Co. v. S. S. WARTENFELS* (1916) I. L. R. 40 Bom. 588

4. — *Order of Appellate Court remanding a case—"Costs to abide the result," meaning of—Discretion of lower Court, if fettered—Costs to abide and follow the result and costs to follow the event, distinction between* Where the High Court, in remanding a case to the lower Court, ordered that the costs should abide the result. Held, that the words "abide the result" only connote that the order as to costs is to await the passing of the final decision in the case, and have not the effect of fettering the discretion of the trying Judge. Distinction between "abide the result" and "abide and follow the result" or "follow the event" pointed out. *PERIAM v. LAKSHMINIDEVAMMA* (1915) I. L. R. 39 Mad. 476

COUNCILLOR.

See BOMBAY DISTRICT MUNICIPALITIES ACT (I of 1901), s. 42

I. L. R. 40 Bom. 166

COURT.— — *power of—**See INTEREST* I. L. R. 43 Cal. 632**COURT-AUCTION.**

See SUBSTITUTION OF PROPERTY AND SECURITY I. L. R. 39 Mad. 283

COURT-FEE.*See COURT FEES ACT*

See MADRAS CIVIL COURTS ACT (III of 1873), ss. 12 13

I. L. R. 39 Mad. 447

COURT-FEES ACT (VII OF 1870).

s. 7, cl. iv—*Suit for accounts—Preliminary decree—Appeal by the defendant against the whole decree—Valuation* In a suit coming under c. iv, s. 7 of the Court Fees Act, when the plaintiff has valued the relief prayed for and obtained a decree, in this instance, a preliminary decree for an account, and the defendant appeals against the

PERINDAVAMMA (1915) I. L. R. 39 Mad. 725

s. 7, cl. v, sub-cl. XI (cc)—*Court-Fees Amendment Act (VI of 1905)—Suit to recover immovable property from tenant—Value for jurisdiction and for court fee, same—Madras Civil*

COURT-FEES ACT (VII OF 1870)—contd.**s. 7—concl'd.**

Courts Act (III of 1873), s. 14—Suits Valuation Act (VII of 1887), s. 8. Although suits for recovery of immovable property from tenants have not been expressly withdrawn from the operation of s. 14 of the Madras Civil Courts Act (VII of 1887), the effect of the amendment of s. 7 of the Court Fees Act (VII of 1870) by adding to it clause (xi) (cc) is to bring such suits also under the operation of s. 8 of the Suits Valuation Act (VII of 1887) and not under s. 14 of the Madras Civil Courts Act; so that in the case of such suits the valuation for purposes of jurisdiction is the same as for court-fees. *NARAYANASWAMI NAIDU v. SESHASIRI ROW* (1915)

I. L. R. 39 Mad. 873

s. 7, cls. v, x—Court-fee—Suit for specific performance of contract to sell and for possession. The plaintiffs alleged that the defendants Nos. 2 and 3 having contracted to sell certain property to them and received part of the price, thereafter sold the same property to defendant No. 1, who had notice of the agreement with the plaintiffs, and they asked (i) that the defendants 2 and 3 might be compelled to complete the sale to the plaintiffs, and (ii) for possession of the property. *Held*, that the suit was really one for specific performance of a contract and the court fee thereon was assessable under s. 7, cl. X, of the Court Fees Act, 1870. *Mohi-ud-din Ahmad Khan v. Mujlis Rai*, I. L. R. 6 All. 231, referred to. *NIHAL SINGH v. SEWA RAM* (1916)

I. L. R. 38 All. 292

s. 7, cl. ix—

See MADRAS CIVIL COURTS ACT (III OF 1873), SS. 12, 13

I. L. R. 39 Mad. 447

s. 19C—

See PROBATE I. L. R. 43 Calc. 625

s. 19E—

See PENALTY I. L. R. 43 Calc. 230

Sch. I, Art. 11 ; Sch. III—Estate of which gross value over Rs. 1,000, but deducting debts, net value less than that, if chargeable with death-duty. The expression "amount or value of the property" in Art. 11 of Sch. I of the Court Fees Act signifies what is described as the "net total" in Annexure A in Sch. III, obtained by the deduction of the amount shown in Annexure B as not subject to duty from the gross valuation of the movable and immovable property left by the deceased. *Held*, therefore, that no fee was leviable under the article upon the estate of the deceased the gross value of which was shown to be Rs. 1,244-11-0, and the amount of the debts Rs. 522 leaving a net balance of Rs. 722-11-0. *Collector of Maldah v. Nerode Kamini*, 17 C. W. N. 21, not followed. *In the goods of Harriett Teviot Kerr*, 18 C. W. N. 121 : s. c. 18 C. L. J. 308, referred to. *In the goods of QUININGBOROUGH* (1915) 20 C. W. N. 591

Sch. I, Arts. 11, 12—Succession certificate—Grant to widow—Death of widow—Fresh

COURT-FEES ACT (VII OF 1870)—concl'd.**Sch. I—concl'd.**

certificate, application by daughter for—Court-fee if must be paid again—Analogy of administration de bonis non, if applies—Fiscal statute; interpretation of—Succession Certificate Act (VII of 1889), s. 14. Whenever a fresh succession certificate is taken, even though it is to collect debts for which a succession certificate has already been taken out and the duty paid, the duty prescribed by the Court Fees Act must be paid. *R*, the widow of a deceased Hindu, took out a succession certificate in respect of certain debts due to the deceased. After her death, *S*, the daughter of the deceased, applied for a succession certificate in respect of the same debt and urged that stamp duty upon the debts having once been already paid by *R*, she was not bound to pay duty again: *Held*, that it was an application for a certificate within the meaning of s. 14 of the Succession Certificate Act, and Court-fee was payable on it as such. One fiscal Act cannot be construed by another fiscal Act. *In re SAROJEBASHINI DEBI* (1916) 20 C. W. N. 1125

Sch. II, Art. 12—Caveat, what is a—Probate proceeding—Persons upon whom citations issued, preferring objections—Objections if must be stamped as caveat. A petition by which a party upon whom citation has been issued opposes the grant of probate is not a caveat and need not be stamped as such. A caveat, which is in the nature of a precautionary measure intended to assure that there shall be no proceeding in the matter of the estate of the deceased without notice to the person who files a caveat, is not necessary where persons interested in the estate of the deceased appear upon citation. *BHABATARINI DEBI v. HARI CHARAN BANERJEE* (1916) 20 C. W. N. 787

Sch. II, Art. 17—Value of suit under Judgment debtor's title disputed—Cancelling of attachment—Suits Valuation Act (VII of 1887) s. 4, valuation under. Where the prayer in a plaint is not only to cancel an attachment but also for a declaration that the judgement-debtor has no interest in the property, the value of the suit is the value of the entire property claimed by the plaintiff. *NARAYANAN SINGH v. AIYASAMI REDDI* (1915) I. L. R. 39 Mad. 692

COURT-FEES AMENDMENT ACT (VI OF 1905)

See COURT-FEES ACT (VII OF 1870), s. 7, CL. (V), SUB-CL. XI (CC).

I. L. R. 39 Mad. 873

COURT OF WARDS.

See LIMITATION I. L. R. 43 Calc. 211

See OUDH LAND REVENUE ACT (XVII OF 1876), SS. 173, 174.

I. L. R. 38 All. 271

COURT OF WARDS ACT (BENG. IX OF 1879).

s. 6 (a)—Debtor's widow made Ward of Court—Suit to recover debt from widow without making manager of Court party as her guardian, if maintainable, when whole estate not taken over. Where

COURT OF WARDS ACT (BENG. IX OF 1879)— contd.

s. 6—contd

the creditor of a deceased zemindar sued his widow who had been declared a disqualified proprietor under s. 6 (a) of Ben. Act IX of 1879 (Court

was badly framed even though it appeared that one of her husband's properties had not been taken over by the Court at the date of the suit, and was taken over only after the lower Court had passed a decree against

Dhanpal Das v

A 118 s c 10

Sutendra Kumar

Prosad v Gosta

5 C W N 113, referred to *ANANDA KUMARI*

DENT v DEGA MOHAN CHUCKERBUTTY (1915)

20 C. W. N. 31

ss. 11, 13A, 51, 55—Estate retained by Court after some co sharers ceased to be disqualified, on account of unpaid debts—Sale of property in execution—Application to set aside sale by judgment debtors not acting through Court of Wards of fees—Estate released pending appeal from order dismissing

r 90 of the Civil Procedure Code. The application was rejected on 11th January 1913 and the judgment debtors applied on 11th April 1913. The estate was released by the Court of Wards on the 18th June 1914, before the appeal was heard.

tion to set aside the sale was incompetent. That

tation Act. *UMAKANTA SEN CHOWDHURY v HIRALAL RAY (1916)* *20 C. W. N. 852*

s. 18—

See *LIMITATION* *I. L. R. 43 Calc. 211*

COURT OF WARDS ACT (BOM. I OF 1905).

ss. 31, 32—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)*, s. 92

I. L. R. 40 Bom. 541

COURT SALE.

validity of—

See *DECREE AGAINST A MAJOR AS MINOR.*
I. L. R. 39 Mad. 1031

COTTON GOODS.

sale and purchase of—

See *CONTRACT ACT (IX OF 1872)*, s. 47
I. L. R. 40 Bom. 517

COVENANTS.

in a mining lease—

See *TENANTS IN COMMON*
I. L. R. 39 Mad. 1049

CRIMINAL APPEAL.

presentation of—

See *CRIMINAL PROCEDURE CODE (ACT V OF 1898)*, ss 421, 233, 537
I. L. R. 39 Mad. 527

CRIMINAL INTENT.

See *CRIMINAL TREASON*
I. L. R. 43 Calc. 1143

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

ss. 4 (A), 195 (1) (b), 478—

See *SANCTION FOR PROSECUTION*
I. L. R. 43 Calc. 1152

ss. 4, 199, 238 (3)—

See *PENAL CODE (ACT XLV OF 1860)* s 498
I. L. R. 38 All. 276

ss. 4, 478—“Complaint”—Statement made to Magistrate in his executive capacity—(Indian Penal Code), Act XLV of 1860, s. 211. Held, that it was not competent to a Magistrate to treat as a complaint, and found thereon such procedure as would naturally follow on a complaint including a prosecution under s. 211 of the Indian Penal Code, a statement which was made to him extra judicially and without any intention or desire that it should be taken as a complaint, but merely in reply to a question asked by the Magistrate. *EMPEROR v BROHE SINGH (1915)*

I. L. R. 38 All. 32

s. 35 (1)—Sentences when may be ordered to run concurrently. S. 35 (1), Criminal Procedure Code, authorises a Court to direct that several punishments passed on an accused for two or more distinct offences do run concurrently only when such sentences have been passed on him at one trial. It is not competent to a Court to give such a direction when the sentences have been passed in different trials. *BEJOY GOPAL GHOSH v KAMAL MANDAL (1916)* *20 C. W. N. 1200*

s. 88—Abounding person, a member of an undivided Hindu family—Undivided interest of his in the family property, or any portion thereof whether liable to attachment under s. 85. The undivided interest of an abounding person who is a member, of an undivided Hindu family in the family property or any portion thereof can be attached under a s. 85 of

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concl.*

s. 88—*concl.*

the Criminal Procedure Code (Act V of 1898). *Mussamat Golab Koonwur v. The Collector of Benares and Raja Odit Narain Sing*, 4 Moo. I. A. 246 and *Juggomohon Buxshee v. Roy Mothooranath Chowdry*, 11 Moo. I. A. 223, followed. *Re Umayan*, 2 Weir's Cr. R. 43, approved. *Re Chinnian*, 2 Weir's Cr. R. 43, overruled. SECRETARY OF STATE FOR INDIA *v. RANGASAMY AYYANGAR* (1916)

I. L. R. 39 Mad. 831

s. 106—

See SECURITY TO KEEP THE PEACE.

I. L. R. 43 Calc. 671

s. 107—

See SECURITY TO KEEP THE PEACE.

I. L. R. 38 All. 468

s. 108 (b)—

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 591

s. 110—

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 153, 1128

s. 110—*Security to be of good behaviour—Appeal—Judgment.* A Court of Appeal dismissing an appeal summarily is not bound to write a judgment; but an appeal from an order requiring a person to furnish security to be of good behaviour is distinguishable from an appeal against a conviction in respect of an offence specifically charged. And in such cases a District Magistrate should not dispose of an appeal otherwise than by judgment showing on the face of it that he has applied his mind to a consideration of the evidence on the record, and of the pleas raised by an appellant, both in the Court below and in his memorandum of appeal. *EMPEROR v. LAL BEHARI* (1916)

I. L. R. 38 All. 393

ss. 110 and 167—*Proceedings under s. 110—Power to remand under s. 167.* In proceedings under s. 110 of the Code of Criminal Procedure (Act V of 1898), the Magistrate has no power to remand an accused person to custody. S. 167 of the Code applies to proceedings under Ch. XIV and not to those under s. 110. *Emperor v. Basya*, 5 Bom. L. R. 27, referred to. *Re SUBBARAYA CHETTI* (1915)

I. L. R. 39 Mad. 928

s. 122—

See SURETY . I. L. R. 43 Calc. 1024

s. 133—*Reasonable opportunity to show cause—Order, if can be made on result of local inspection—Vague and indefinite order.* A proceeding under s. 133, Cr. P. C., is in the first instance entirely *ex parte* and the report or the other information whereon the Magistrate has taken action before making the conditional order is no evidence against the opposite party. It is consequently desirable that reasonable opportunity should be given to the opposite party to show cause as contemplated by s. 135, cl. (b), and to adduce evidence as prescribed

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concl.*

s. 133—*concl.*

by s. 137 (1). An order under s. 133 cannot even by consent of parties be based upon information gathered at a local enquiry. When in a proceeding under s. 133, instituted against a number of persons, it is alleged that various unlawful obstructions have been caused upon a public way, it is essential that the order should state accurately, with regard to each person, the specific obstruction made by him, which he is required to remove, unless it is alleged that all the persons are jointly responsible for all the obstructions mentioned. *Kalimohan v. Nakari Chandra*, 11 C. L. J. 114, followed. *RAI MOHAN KARMAKAR v. KING-EMPEROR* (1916)

20 C. W. N. 1171

s. 144—*Successive orders, propriety of—Revision by High Court of order under section after expiration of two months.* A Magistrate should not by successive orders under section 144, Criminal Procedure Code extend the period of two months prescribed by cl. (5) of the section. *Satish Chandra Ray v. Emperor*, 11 C. W. N. 79, referred to. Case in which the High Court set aside an order under s. 144, Criminal Procedure Code after the expiration of two months from the date of the order. *BISHESHUR CHAKRAVARTY v. EMPEROR* (1916)

20 C. W. N. 758

s. 145—

1. *Order under section contrary to decree of Civil Court.* The petitioners, the second party to the proceeding under s. 145, Criminal Procedure Code, obtained a decree against one of the first party and another person who were entitled to an undivided one-fourth share in the property in dispute. This share was sold in execution of the decree and purchase by the decree-holders, the petitioners, who obtained delivery of possession through the Court. The Magistrate finding that the petitioners were never in actual possession of the property and the crop was grown by the first party made an order in favour of the latter. *Held*, that the order was liable to be set aside. *ATUL HAZRAH v. UMA CHARAN CHONGDAR* (1916)

20 C. W. N. 796

2. *Addition of parties—Sub-s. 4 (1)—Wrongful and forcible dispossession—Digging tank with sanction of Municipality—Party if must have had notice of the proceeding to be concerned in the dispute.* Where in a proceeding under s. 145, Criminal Procedure Code, it appeared that one of the parties within two months from the commencement of the proceeding obtained sanction from the Municipality and proceeded to dig a tank on the land in dispute to the exclusion of another party who was then found to be in possession: *Held*, that it was forcible and wrongful dispossession within the meaning of sub-s. 1, cl. (1), of s. 145. *Held*, further, that under the Full Bench Ruling in *Krishna Kamini v. Abdul Jubbar I. L. R. 30 Calc. 155*: s. c. 6 C. W. N. 737, a party may be added provided he was concerned originally in the dispute which was the foundation of the pro-

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

s. 145—*conclld.*

ceeding and there is no necessity for a fresh proceeding. Further, if a party is added before the inquiry begins, there is no irregularity. That whether or not there was then an apprehension of a breach of the peace is a matter eminently for the exercise of the Magistrate's discretion. For a person to be concerned in a dispute relating to land, it is not necessary to be actually present near the land or to have had notice of the proceeding when started. *MAIMOTHA NATH CHATTERJI v GANOA GIR GOSSAIN* (1916) 20 C. W. N. 978

3. *Joint title to land, effect of, on the applicability of the section.* The mere fact that there may be a joint title to the land would not prevent the application of s. 145. *Criminal Procedure Code Basanta Kumar Das v Mohesh Chandra Saha*, 17 C. W. N. 944, followed. *BALNATH MAHWART v W. B. STREET* (1916) 20 C. W. N. 518

ss 145, 146—*Disputed land under water rendering act of possession by either party impossible—Order in favour of one party on the ground of his possession in the previous year—Substitution by High Court of order under s. 146 for order under s. 145.* Where in a proceeding under a 146 Criminal Procedure Code the Magistrate made the final order in favour of one party, finding that as there could not be any act of peaceful possession within two months of the date of the proceeding owing to the land being under water, the possession of the current year was to be presumed in favour of the man who was in possession during the previous years. *Held*, that the order was in

s. 146—

Suit to determine rights of parties to order under, period of limitation for—*Suit, if lies against Magistrate BROJENNA KISHORE ROY CHOWDHURY v SAROJINI RAY* (1915) 20 C. W. N. 431

s. 164—*Difference between statement and confession—Statement taken on affirmation, under s. 164 from a complainant, not a confession—Admissibility in evidence of statement, to prove perjury.* A complainant's sworn statement charging another

of the complainant's own guilt of some other offence but not recorded as such by the Magistrate in accordance with the provisions of s. 304 of the Code, is no bar to its admissibility in evidence against the complainant on a charge of perjury. *See* *Whether a statement is to be regarded as a con-*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

s. 164—*conclld*

fession or not depends on the connection in which and the purpose for which it was made. A statement recorded as such cannot be used as a confession, nor a confession, as a statement. *Re RAMANUJANNA* (1916) 1 L. R. 39 Mad. 977

s. 164—*Warrant for search of house—Resistance to police—Legality of warrant.* In the course of an investigation into a dacoity which had occurred in the Agra district a circle inspector of the Mainpuri district sent a sub-inspector to the circle inspector concerned with a suggestion that the house in which one Nihal Singh lived, in the Mainpuri district, might be searched. The Agra circle inspector thereupon gave, as he said, written instructions to the sub-inspector who had been sent to him from Mainpuri to the effect

searched who were suspected by the sub-inspector. Nihal Singh was a dacoity in pursuance of the house where Nihal Singh was living which belonged to Brikhlal Singh his father in law they were assaulted by Brikhlal Singh and his relations and friends and prevented from conducting the search or arresting Nihal Singh. *Held*, that the authority under which the police had attempted

395 or 142, was discussed as a matter arising on the evidence in the case *EMPEROR v BRISHNATH SINGH* (1915) 1 L. R. 38 All 14

ss. 178 and 181—*Complainant in Madras town, doing business in mofassil by agent—Agent's duty to remit principal's money to Madras—Misappropriation by agent in mofassil—*

mission. The agent sold the oil in the mofassil and without sending the proceeds misappropriated the same. *Held*, (a) that the proceeds were the property of the Madras firm, (b) that the case was governed by s. 181 and not s. 179 of the Criminal Procedure Code, and (c) that as the misappropriation and consequent loss occurred to the Madras firm primarily only at the mofassil station, the Magistrate at that station and not the one in Madras had jurisdiction to try the offences under s. 406 or 409, Indian Penal Code. Cases on the subject reviewed. *BRISHNATH SINGH v SHAW WALLACE & Co.* (1915) 1 L. R. 39 Mad. 576

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— s. 181, cl. (4)—*Kidnapping committed outside British India—Jurisdiction of British Courts “when person kidnapped” detained within British India—Moyurbhunj not in British India.* A person charged with having committed the offence of kidnapping in Moyurbhunj which is outside British India, cannot be tried by a Court in British India within the local limits of which the person kidnapped may be conveyed or concealed or detained. *BHUTA SANTAL v. DAMA SANTAL* (1915) 20 C. W. N. 62

— ss. 192, 200 to 203, 476, 537—

See FALSE INFORMATION.

I. L. R. 43 Calc. 173

— s. 195—

See SANCTION FOR PROSECUTION.

I. L. R. 43 Calc. 597

1. — *False endorsement on a promissory note—Indian Penal Code (Act XLV 1860), s. 193, complaint under—Sanction—Necessity.* Where a complaint of false endorsement on a promissory note to prove a payment of Rs. 1,500 was preferred to a Second Class Magistrate but was transferred to a First Class Magistrate and where between the date of filing of the complaint and its transfer, a civil suit on the promissory note was filed: *Held*, that the sanction of the Civil Court under s. 195 (1) (b) was necessary before the Court could take action on the complaint. *Held*, also, that the date of the presentation of the complaint before a Magistrate having no jurisdiction to entertain it was not the date of the institution of the Criminal Proceedings. *Re PARAMESWARAN NAMUDURI* (1915) . . . I. L. R. 39 Mad. 677

2. — *Sanction, granting of under, to be made on legal evidence—S. 195 (b), High Court hearing an appeal under—Judges divided equally in opinion—Whether an appeal lies under cl. 15 of the Letters Patent.* A Magistrate received a complaint of criminal breach of trust, examined the complainant on oath under s. 200, Criminal Procedure Code, but suspecting the complaint to be false referred it under s. 202, Criminal Procedure Code, to a Police Inspector for investigation and on receiving the report of the Inspector to the effect that the case was entirely false, dismissed the complaint under s. 203, Criminal Procedure Code. On an application being made for sanction to prosecute the complainant for preferring a false complaint, the Magistrate asked the complainant to show cause why sanction should not be given but as no witnesses were examined by him to show the truth of his complaint, the Magistrate granted sanction. *Held*, affirming the decision of *SUNDARA AYYAR J.*, that the above materials did not constitute legal evidence for the Magistrate to grant the sanction and that hence the sanction given should be set aside. *Quære*: Whether an appeal under c. 15 of the Letters Patent lies against an order of a Division Bench of the High Court when one of the

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— s. 195—*contd.*

Judges differs from his colleague on hearing an application under s. 195 (b), Criminal Procedure Code, to revoke a sanction granted by a lower Court. *BAPU v. BAPU* (1913)

I. L. R. 39 Mad. 768

3. — *Sanction—Scope of section—Proceedings in relation to which sanction of Court necessary—Information to police followed by complaint in Court.* Where the information to the Police was followed by a complaint to the Court based on the same allegations and on the same charge as that contained in the information to the police and the complaint was investigated by the Court, sanction or a complaint of the Court itself under s. 195 (b), Criminal Procedure Code, would be necessary before the Court could take cognizance of an offence punishable under s. 211, Indian Penal Code, alleged to have been committed by making a false charge to the police, on the ground that it was an offence committed in relation to a proceeding in Court. *BROWN v. ANANDA LAL MULLICK* (1916) 20 C. W. N. 1347

— s. 195 (1) (c)—*Sanction to prosecute—Offence alleged to have been committed in respect of a document produced in a Civil Court by a party, but before the person producing it had become a party to any suit.* The words used in s. 195 (1) (c) “when such offence has been committed by a party to any proceeding in any Court” refer not to the date of the commission of the alleged offence, but to the date on which the cognizance of the Criminal Court is invited. Hence when once a document has been produced or given in evidence before a Court the sanction of that Court or of some other Court to which that Court is subordinate, is necessary before a party to the proceedings in which the document was produced or given in evidence can be prosecuted, notwithstanding that the offence alleged was committed before the document came into Court, at a time when the person complained against was not a party to any proceeding in Court. *Girdhari Merwari v. King-Emperor*, 12 C. W. N. 822, *King-Emperor v. Raja Mustafa Ali Khan*, 8 Oudh Cases 313, and *Emperor v. Lalla Prasad*, I. L. R. 34 All. 654, referred to. *Noor Mahomad Cassum v. Kaikhosru Maneckjee*, 4 Bom. L. R. 268, not followed. *EMPEROR v. BHAWANI DASS* (1915) . I. L. R. 38 All. 169

— s. 195 (6)—

See SANCTION FOR PROSECUTION.

I. L. R. 39 Mad. 750

— ss. 222 (2) and 233—*Penal Code, ss. 409 and 477A—Misjoinder of charges—Criminal breach of trust and falsification of accounts—Illegality.* An accused person was charged with and tried at the same trial for offences under s. 409 and s. 477A of the Indian Penal Code. In respect of the former offence he was charged with criminal breach of trust respecting a lump sum of money composed of numerous items. In respect of the latter offence

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 222—*contd.*

he was charged with suppressing a large number of documents showing the tender to him of sums of money by the persons liable to pay the same, and with putting false numbers on three of such documents. These documents (called *arizals*) related as well to other sums of money as to the sums

charges against the accused in the manner described was an illegality which vitiated the trial. *EMPEROR v. KALKA PRASAD* (1915)

I. L. R. 38 All. 42

s. 234—

See JOINDER OF CASES

I. L. R. 43 Cal. 13

Misjoinder of charges

belonging to one and the same complainant *Held*, that there was a misjoinder of charges under s. 234, Criminal Procedure Code *RAHIMAN BIBI v. MABARAK MANDAL* (1916) 20 C. W. N. 672

ss. 234, 239—

See JOINDER OF CASES.

I. L. R. 38 All. 457

s.
and receiver in
absence of evidence

of receiving the stolen property from the theft thereof, the theft and the receipt of the stolen property may be considered as parts of the same transaction. It would not, therefore, be illegal to try theft and the receiver jointly. *Emperor v. Balabhai Harjond, & Bom L. R. 517*, followed *EMPEROR v. BHIMA* (1916) I. L. R. 38 All. 311

s. 247—Death of complainant—Application by the son of complainant to proceed with the case—Acquittal under s. 247, Criminal Procedure Code—Reference under s. 433, Criminal Procedure Code—Interference by High Court—Practice in case of acquittals. On the application of the complainant in a case of rioting which ended in a conviction, proceedings under ss. 154, 155, Indian Penal Code,

the trying Magistrate acquitted the accused under s. 247, Criminal Procedure Code, being of opinion that he had no option in the matter; *Held*, that it is open to doubt whether s. 247, Criminal Procedure Code was intended to apply to a case like the present. The section seems to apply to the case of a complainant who is alive but does not appear.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 247—*contd.*

That in any view the trying Magistrate should have proceeded with the case. That the practice of the High Courts has always been to refuse to interfere in revision with acquittals except for special reasons, but in the present case which was one of considerable importance involving the peace of the district and in which the Magistrate had not exercised his discretion and given reasons for refusing to go on with the case, the order of acquittal should be set aside. *DAMOO SAHU v. JITAN DUSADH* (1916) 20 C. W. N. 862

ss. 248, 345—Wrongful confinement case—Petition filed by the complainant praying that the case may be struck off without hearing—Such petition, whether compromise or withdrawal—Procedure in warrant cases for withdrawal—Meaning of "compromise and withdrawal" "Compromise" is a word which in itself contemplates an arrangement to which there are two parties "Withdrawal" has no such meaning. A case is compromised if with the consent of the accused it is withdrawn. A

edure
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trate to satisfy himself under what section the petition is before him. Where the answers of the complainant clearly indicate that the case had not been compromised but was being withdrawn without the consent of the accused and the subsequent action of the accused shows that he had never consented to the compromise of the case *Held*, that the petition was not a petition made under

20 C. W. N. 1209

ss. 253, 259—Warrant case—Discharge of accused for absence of complainant In a warrant

in a case where the offence may be lawfully compounded. *ALEXANDER v. CONNORS* (1916)

20 C. W. N. 698

s. 256—Summons case and Warrant case, trial of—Procedure, that of Warrant case—Warrant case, withdrawn—Charge framed in summons case—Right of accused to recall and cross-examine prosecution witnesses—Magistrate, refusal of, illegal—Prejudice—Onus on prosecution When a summons case and warrant case are tried together, the procedure to be followed is that prescribed for the warrant case. *Rajnarayan Koonwar v. Lala Tamal Das*, I. L. R. 11 Cal. 21, followed, if the complaint in respect of the offence triable as

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.***s. 256—*concl.***

a warrant-case is not proceeded with, but a charge framed only in respect of the offence triable as a summons-case, the accused is entitled to recall and cross-examine the prosecution witnesses under s. 256 of the Code of Criminal Procedure, as he could not have anticipated the withdrawal of the former charge and could not be said to have been in default. A refusal of the Magistrate to allow the accused to recall and cross-examine the prosecution witnesses is illegal, and it is for the prosecution to show that the accused are not prejudiced thereby. *Re SOMANADRI* (1915)

I. L. R. 39 Mad. 503

s. 260, cl. (1)—*Bengal Tenancy Act (VIII of 1885), s. 71—Paddy cut and carried away by landlord from tenant's land, value of, for summary trial for theft.* Since a tenant is entitled to the exclusive possession of the whole produce until it is divided under s. 71 of the Bengal Tenancy Act, his complaint against landlord for theft for having cut and carried away paddy worth Rs. 88 of which the latter was only entitled to one half, cannot be summarily tried by a Magistrate as the value of the property in this case must be regarded as Rs. 88 and not Rs. 44 only. *HABOO v. SHEKH KARIMAN* (1916) 20 C. W. N. 1212

s. 287—

See PRACTICE . I. L. R. 40 Bom. 220

ss. 289, 292—

See RIGHT OF REPLY.

I. L. R. 43 Calc. 426

s. 341—*Deaf and dumb accused—Procedure and practice.* Though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment. *EMPEROR v. A DEAF AND DUMB ACCUSED* (1916)

I. L. R. 40 Bom. 598

s. 342—*Right of the Magistrate or Sessions Judge to put questions or take statements from accused when no evidence given by prosecution to implicate them—Answers taken from accused in contravention of s. 342, not admissible in evidence.* If in a criminal case the prosecution had not let in any evidence implicating the accused or some of the accused in the crime charged, the Magistrate is not entitled under s. 342 of Criminal Procedure Code to put questions to such accused or to invite them to make a statement; and this rule equally applies to trials before the Sessions Court. Answers to questions received by the committing Magistrate in contravention of s. 342 of the Criminal Procedure Code are not admissible in evidence against the accused in the subsequent trial before the Sessions Court. *Mohideen Abdul Kader v. Emperor, I. L. R. 27 Mad. 238 and Reg. v. Berriman, 6 Cox. Cr. C. 388*, followed. *Re ABIBULLA RAYUTHAN* (1915)

I. L. R. 39 Mad. 770**CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*****s. 345—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 439.

I. L. R. 39 Mad. 604

Compounding an offence—Complainant residing before hearing, effect of. Per *ABDUR RAHIM J. (AYLING J., dubitante).*—A composition arrived at between the parties of a compoundable offence is complete as soon as it is made; and it has the effect of an acquittal of the accused under s. 345, Criminal Procedure Code, in respect of that offence, though one of the parties, later on, resiles from the compromise and no statement or petition recording the compromise is filed in Court by the parties. *Murray v. Queen-Empress, I. L. R. 21 Calc. 103*, referred to. *KANNI ROWTHER v. INAYATHALLA SAHIB* (1915)

I. L. R. 39 Mad. 946**ss. 345 (5), 423 (1) (d), 439—**

See CRIMINAL TRESPASS.

I. L. R. 43 Calc. 1143

s. 369—*Review of judgment—Power of High Court to review its own order on the criminal side—Rules of Court, Chapter VII, r. 8—Finality of order.* Held, that the High Court has no power to review an order dismissing an application for revision made by an accused person. *In the matter of the petition of F. W. Gibbons, I. L. R. 11 Calc. 42*, and *Queen-Empress v. Durga Charan, I. L. R. 7 All. 672*, followed. But so long as an order is not sealed as required by the Chapter VII, r. 8 of the Rules of Court, it is not final, and it is open to the Judge who passed it to alter it. *Queen-Empress v. Lalit Tiwari, I. L. R. 21 All. 177*, and *Emperor v. Kallu, I. L. R. 27 All. 92*, followed. *EMPEROR v. GOBIND SAHAI* (1915)

I. L. R. 38 All. 134

s. 403—*Previous acquittal—Subsequent trial how far barred—Penal Code (Act XLV of 1860), ss. 467, 109, 471.* The accused was tried before a Court of Session for abetment of forgery in relation to a document under ss. 467 and 109 of the Indian Penal Code; and was acquitted. He was again tried before the Court of Session for using as genuine the same forged document, under s. 471 of the Indian Penal Code. It was objected that the previous acquittal was a bar to the second trial under s. 403 of the Criminal Procedure Code. Held, overruling the contention, that sub-s. 1 of s. 403 of the Criminal Procedure Code did not apply to the case, inasmuch as the case was not one contemplated by s. 236, that is to say, a case where, upon the facts proved, it was doubtful what should be the true view of the offence constituted. Held, further, that the case fell under sub-cl. (2) of s. 403, for the series of acts beginning with the forgery and ending with the user of the forged document in the Civil Court to support the civil claim must be regarded as so connected together as to form the same transaction, or carrying through of a single predetermined plan, so that under s. 235 (1) it

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 403—*contd.*

would have been competent to try the accused for both offences at the same trial. *Idd.*, also, that the case fell under sub s. 4 of s. 403, because the Court which acquitted the prisoner on the charge of abetment of forgery was not competent to try the offence under s. 471 of the Indian Penal Code, inasmuch as at the time of the earlier trial no sanction for the prosecution under s. 471 had been given under s. 193 of the Criminal Procedure Code. **EMPEROR v. JIVRAM DANKARJI (1915)**

I. L. R. 40 Bom. 97

ss. 403, 413—One of several co-accused in the same trial sentenced to one month's imprisonment, others to a longer period—*Appeal.*

person convicted at the same trial, even though that particular person may have received a sentence, which, if it stood alone, would not have been appealable. **EMPEROR v. LAL SINGH (1916)**

I. L. R. 33 All. 395

of the Court below and the reasons advanced for that decision. Only one board rule can be laid down with regard to the consideration of evidence in all criminal cases and that is that the innocence of the accused person must be presumed and the burden lies upon the prosecution of completely rebutting that presumption. If after the consideration of the whole evidence any doubt is felt by the Court as to the guilt of any accused person he is entitled to the benefit of that doubt and the verdict must be in his favour. **DEUTY LEGAL REMEMBRANCE, BIHAR AND ORISSA v. MATLAK-DHARI SINGH (1913)** 20 C. W. N. 128

business, powers of, to admit criminal appeals, when Admission Court is sitting—*Notes to the Weekly Sitting List—Charter Act (24 & 25 Vict., Cap. 104), ss. 13 and 14—Joint trial of two separate calendar cases—Offences distinct—Illegality, not cured by s. 537, Criminal Procedure Code—Retrial, if acquittal wrong—When a case of acquittal taken up by the*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 421—*contd.*

High Court in the exercise of its powers of revision was under the consideration of a Bench, notice was

ting criminal appeals does not deprive the Divisional Court constituted for the disposal of criminal

sional Courts must be ascertained and not by reference to the notes to the "Sittings List" which are merely instructions for the guidance of practitioners. Under s. 13 of the Charter Act rules for the exercise of the High Court's appellate jurisdiction by one or more Judges or by Divisional Courts can be made only by such High Court, the powers of the Chief Justice being only those conferred by s. 14 to determine which Judge shall sit alone and which in Divisional Courts. *Per OLN*

actual presentation to an officer of the Court such as a Bench Clerk or to one of the Judges, its mem-

the establishment of two cases, those allegations being shortly that accused had cheated the Bank of Madras in connection with certain bills of exchange and also by a false representation contained in a document as to the amount of his assets, the Magistrate after recording the prosecution evidence continuously without discriminating between that which was relevant on each of these two charges, framed separate charges and also numbered them as different calendar cases, but when the witnesses came to be cross examined, he lost sight of the necessity for keeping the two trials separate and allowed the witnesses to be cross-examined promiscuously in respect of both the charges. *Held*, that the joint trial of the two cases was illegal inasmuch as it contravened the provisions of s. 233, Criminal Procedure Code, and that the illegality could not be cured by s. 537, Criminal Procedure

accused cannot be convicted and sentenced by the

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 421—*concl'd.*

High Court; the only course open is to order that the accused be tried a second time. *Per* NAPIER J. —The decision of the Privy Council in *Subramania Ayyar v. King Emperor*, I. L. R. 25 Mad. 61, does not compel the Court to hold that in no case can a misjoinder of charges or a failure to try charges separately be an irregularity within the meaning of s. 537, Criminal Procedure Code. *THE PUBLIC PROSECUTOR v. KADIRI KOYA* (1915)

I. L. R. 39 Mad. 527

ss. 424, 367—*Appellate judgment, what should be.* The petitioners were convicted all under ss. 147 and 342, Indian Penal Code, and some also under s. 354 and some under s. 458, Indian Penal Code; the convictions were affirmed in appeal by the Sessions Judge. *Held*, that there ought to be sufficient materials in the appellate judgment itself to enable the High Court to form a conclusion as to the propriety of the conviction of each of the accused having regard to the various offences with which he was charged, and to enable it to come to a conclusion as to the correctness of the sentence which has been passed upon each of the accused having regard to the nature of the offence with which each of the accused was charged. The High Court directed a rehearing of the appeal by the same Sessions Judge. *ARINDRA RAJ-BUNSHI v. KING EMPEROR* (1916)

20 C. W. N. 1296

ss. 429, 439—

See SANCTION FOR PROSECUTION.

I. L. R. 39 Mad. 750

s. 432—*Reference under—Indian Electricity Act (IX of 1910), s. 33, scope of—"Every person," meaning of.* The words "every person" in s. 33 of the Indian Electricity Act is not confined to persons licensed under Parts II and III of the Act. S. 33 of the Act is not confined to cases in which the accident actually results in personal injury or death but also extends to cases likely to have resulted in loss of life or personal injury. *Re HAWKINS* (1915)

I. L. R. 39 Mad. 686

s. 435—

See PRESS ACT (I OF 1910), s. 3 (I), PRO-VISO . . . I. L. R. 39 Mad. 1164

ss. 435, 436—*Commitment to the Court of Sessions by the High Court in revision—Indian Arms Act, ss. 19F, 20.* Where in a case proceeded with under s. 19F, the evidence recorded by the Magistrate disclosed an offence under s. 20 of the Arms Act, the High Court directed the commitment of the case to the Court of Sessions. *NISHI KANTA LAHIRI v. THE CROWN* (1916)

20 C. W. N. 732

ss. 435, 439—*Charter Act (24 & 25 Vict., cap. 104), s. 15—High Court, powers of, to revise—Complaint of offences under Indian Penal Code (Act XLV of 1860), ss. 189 and 504—Charges framed—Prosecution evidence unreliable—Offences not made out—Prosecution not bonâ fide—*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 435—*concl'd.*

tory order—Process server's right to enter any house to effect service. A complaint was preferred against the accused in respect of offences under ss. 189 and 504, Indian Penal Code, and charges were framed under the said sections by a second class sub-magistrate. A criminal revision petition was filed by the accused in the High Court to quash the proceedings on the ground that the evidence on record was insufficient to substantiate either of the charges and that the proceedings were instituted out of pure malice and with the object of harassing the petitioner. A preliminary objection was taken as to the maintainability of the petition and the powers of the High Court to interfere in revision. *Held*, that though the power of revision has to be exercised with great care the High Court has jurisdiction to interfere at any stage of the proceedings, if it considers that in the interest of justice it, should do so. *Held* (on the fact of the case), that the case was a fit one for interference in revision, as a careful consideration of evidence of the prosecution led to the conclusion (i) that the ingredients necessary to constitute an offence under ss. 189 and 504, Indian Penal Code, had not been made out and (ii) that the case as presented to the Court bore considerable evidence of fabrication and that the development of the case in the later stages showed that it was not a case of *bonâ fide* prosecution but that the complainant was a tool in the hands of others. For an offence under s. 504 of the Indian Penal Code, mere abuse will not do without an intention to cause a breach of the peace or knowledge that a breach of the peace is likely. The fact of a process server being entrusted with a subpoena to serve a witness described as residing in a particular house does not give him a general right of entry into any house without the permission of the owner or person in charge. *Re KUPPUSWAMI AYAR* (1915)

I. L. R. 39 Mad. 561

ss. 435, 439, 133—*Revision petition to the High Court against an order under s. 133—Order of a single Judge of the High Court—Appeal against order, if maintainable—Letters Patent (24 & 25 Vict., cap. 104, cl. 15).* No appeal lies, under cl. 15 of the Letters Patent, against an order of a single Judge of the High Court in a Criminal Revision Petition preferred against an order of a Magistrate acting under s. 133 of the Code of Criminal Procedure. *SUBBAYYA v. RAMAYYA* (1915)

I. L. R. 39 Mad. 537

s. 439—

1. *Criminal Revision under—Compounding of offences—Incompetency of High Court to sanction composition, in Revision—Criminal Procedure Code (Act V of 1898), s. 345, Exhaustive.* The High Court sitting as a Court of Revision has no power to sanction the compounding of offences mentioned in s. 345, Criminal Procedure Code, which is exhaustive of the Courts which can sanction the composition of offences and the stages

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 439—*conclld.*

at which the composition can be effected. *Emyerer v Ram Piyari, I. L. R. 32 All. 153*, dissenting from. *Re RANGAYYA (1913) I. L. R. 39 Mad. 604*

2. — *Presidency Magistrate, order of discharge by—Revision by High Court*

good reasons for doing so although no question of jurisdiction arises in the case. Where N, one of several accused persons, was discharged by the Magistrate under s. 233, Criminal Procedure Code, and the High Court at the hearing of the appeal of the other accused persons who were convicted by the Magistrate directed that the evidence of N should be recorded and in disposing of the appeal took into consideration the evidence so recorded and being of opinion that that evidence could not in some respects be accepted, issued a rule to show cause why the order of discharge should not be set aside. *Held*, that the mere fact that N was called upon to give his evidence in the case did not convert the order of discharge into one of acquittal and did not deprive the High Court of its revisional jurisdiction. That in the circumstances of the case the High Court should not set aside the order of discharge inasmuch as the evidence of N which was recorded under orders of the High Court and which was used by that Court for the purpose of

NANDA GOPAL ROY (1916) 20 C. W. N. 1128

— ss. 439, 422, 423—*Order of acquittal. Revision petition to the High Court by private parties—Power of High Court to interfere—Interference, in what cases—Service of notice of appeal on District Magistrate—Omission of service, effect of—Irregularity.* The High Court has power to interfere in

the question is one as to the appreciation of evidence or where there is no patent error or defect in the order which has resulted in grave injustice. Mere omission to serve notice of appeal on the

I. L. R. 39 Mad. 505

See PALJURY I. L. R. 43 Calc. 512

— s. 476—

See MADRAS ESTATES LAND ACT (I of 1908), ss. 161—167.

I. L. R. 39 Mad. 414

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 476—*conclld.*

1. — *Practice—Order for prosecution for perjury—Court bound to set out assignments of perjury alleged—Civil Procedure Code, 1908, s. 115—Revision—Material irregularity. Held*, that when a Civil Court makes an order under s. 476 directing that a person should be prosecuted for perjury such Court is bound to set forth in its order the specific assignments of perjury alleged against the accused. Failure to do so is a material irregularity within the meaning of s. 115 of the Code of Civil Procedure. *EMPEROR v KASHI SURESH (1916) I. L. R. 38 All. 695*

2. — *Stay of criminal proceeding, pending appeal in matter out of which they arise. DATT MANTO v KING EMPEROR (1916) 20 C. W. N. 1118*

— s. 488—

1. — *Maintenance—Criminal revision petition to the High Court—Order of a single Judge—Appeal against, if maintainable—Letters Patent, cl. 15—Criminal trial, order in. No appeal lies under cl. 15 of the Letters Patent against an order of a single Judge of the High Court dismissing a criminal revision petition filed again under s. 4 (Act V of I*

I. L. R. 39 Mad. 472

2. — *Unable to maintain itself," meaning of—Child entitled to maintenance from its mother's estate; not entitled to order for maintenance from father. A child that possesses a right to maintenance from its mother's estate is not entitled under s. 488, Criminal Procedure Code (Act V of 1898), to an order for maintenance against its father. *Kariyadan Pollar v. Kayat Betran Kuthi, I. L. R. 19 Mad. 461*, followed. *In re Parathy Palappal Noidten (1913) Mad. IV N. 997*, not followed. The words "unable to maintain" in s. 488 are not confined to physical inability but include also pecuniary inability. *CHANTAN v MATHU (1915) I. L. R. 39 Mad. 957**

— s. 491—*Directions of the nature of a habeas corpus—Application to be made to Judge on the Original Side of the High Court—S. 54, scope of—Circumstances justifying arrest—"Credible information" and "reasonable suspicion," meaning of. An application under s. 491, Criminal Procedure Code, is to be made to the High Court in its Ordinary Original Criminal Jurisdiction. The petitioner who was the managing agent of a certain Provident Company of Calcutta was arrested by the Calcutta Police under s. 54, Criminal Procedure Code, on receipt of a letter written by an Inspector of Police in a certain district in the Bombay Presidency to the Commissioner of Police, Calcutta, in which it was stated that on enquiries into complaints against the Company and their local agent in Bombay it appeared, there being prima facie evidence to that effect, that the managing agent*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—concl'd.**s. 491—concl'd.**

and the local agent committed offences under s. 409, 420, Indian Penal Code. The letter contained a request to cause the arrest of the petitioner and was forwarded by the District Magistrate with a note that the petitioner might be arrested under s. 51, Criminal Procedure Code, and sent to the Magistrate, 1st class, of the District, to be tried by him. It was admitted that the officer effecting the arrest in Calcutta relied solely on the aforesaid letter and had no personal knowledge of the facts of the case: *Held*, that the arrest of the petitioner under s. 51, Criminal Procedure Code, was not proper. That s. 51, Criminal Procedure Code, gives wide powers to a police-officer to make an arrest without an order from a Magistrate and without a warrant only in certain circumstances limited by the provisions contained in the section, and it is necessary in exercising such large powers to be cautious and circumspect. The section gives a police-officer personal authority and involves personal responsibility, and the "reasonable suspicion" and "credible information" must be based upon definite facts which the police-officer must consider for himself before he acts under the section. He cannot delegate his discretion or take shelter under the belief or judgment of another police-officer. In the circumstances of the case the High Court under s. 491, Criminal Procedure Code, directed the release of the petitioner. *In the matter of CHARU CHANDRA MAJUMBAR* (1916). 20 C. W. N. 1233

s. 512—Evidence taken against an accused person who has absconded—Condition precedent to the use of such evidence against accused when arrested. Evidence purporting to have been recorded under the provisions of s. 512 of the Code of Criminal Procedure cannot be used against the person concerning whom it was taken, unless it can be shown that before such evidence was recorded it was proved to the satisfaction of the Court that the accused had absconded and that there was no immediate prospect of arresting him. *EMPEROR v. RUSTAM* (1915).

I. L. R. 38 All. 29

s. 517—Order as regards disposal of property—Discretion in making orders to be judicially exercised—Currency note—Property passes by delivery. The accused stole a currency note, which he offered to a goldsmith as price for gold ornaments purchased by him. The goldsmith not having had sufficient cash, got the note cashed by a neighbouring shop-keeper (applicant), who cashed it in good faith. At the trial of the accused, the note was attached from the applicant. The accused was convicted of criminal breach of trust of the currency note which belonged to Government; and the note was ordered to be delivered to the Crown. The applicant having applied: *Held*, that as property in a currency note passed by mere delivery, the applicant had obtained a good title to the note notwithstanding that the accused had no title. *The Collector of Salem*, 7 Mad. H. C.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—concl'd.**s. 517—concl'd.**

R. 233, and *Empress v. Joggessur Mochi*. I. L. R. 3 Calc. 379, followed. Orders under s. 517 of the Criminal Procedure Code (Act V of 1898) are discretionary, but the discretion is open to correction where it has been exercised in violation of accepted judicial principles. *In re PANDHARI-NATH PUNDLIK* (1915) I. L. R. 40 Bom. 186

ss. 523, 524—

See RIGHT OF SUIT.

I. L. R. 40 Bom. 200

s. 530—

See EUROPEAN BRITISH SUBJECT.

I. L. R. 39 Mad. 942

CRIMINAL REVISION.

Practice—Time-limit of applications to High Court in criminal revision—Application made after the expiry of 60 days from the date of the order. As a matter of practice the High Court will not, save in exceptional circumstances, entertain an application in criminal revision unless it is made within sixty days, excluding the time necessary to obtain copies, from the date of the order complained of. *In the matter of KHETRA MOHAN GIRI* (1916). I. L. R. 43 Calc. 1029

CRIMINAL SESSIONS, HIGH COURT.

See PERJURY. I. L. R. 43 Calc. 542

CRIMINAL TRESPASS.

High Court, power of, to allow composition of an offence on revision—Criminal Procedure Code (Act V of 1898), ss. 345 (5), 23 (1) (d), 439—Necessity of Criminal intent—Entry on land under bona fide claim of right—Penal Code (Act XLV of 1860), ss. 441, 447. The High Court has no power, as a Court of Revision, under s. 439 read with s. 423 (1) (d), to sanction the composition of an offence when entered into after the conviction of the accused. *Adhar Chandra Dey v. Subodh Chandra Ghosh*, 18 C. W. N. 1212, *Sankar Rangayya v. Sankar Ramayya*, 16 Cr. L. J. 750; 29 Mad. L. J. 521, and *Emperor v. Ram Chandra*, I. L. R. 37 All. 127, followed. *Emperor v. Ram Piyari*, I. L. R. 32 All. 153, *Naqi Ahmad v. King-Emperor*, 11 All. L. J. 13, *Nidhan Singh v. King-Emperor*, 1 Cr. L. J. 509; 5 Punj. L. R. 252, *Ram Sarup v. Emperor*, 11 Cr. L. J. 496; 13 O. C. 161, and *Lall v. Emperor*, 15 Cr. L. J. 567; 17 O. C. 92, dissented from. *Abadi Begum v. Ali Husen*, (1897) All. W. N. 26, distinguished. To sustain a conviction under s. 447 of the Penal Code, it is necessary to prove not only entry on land in the possession of the complainant but also one of the intents specified in s. 441. Where a person was charged under ss. 447 and 504 of the Penal Code and convicted only under the former: *Held*, that the intent to commit an offence or to intimidate, insult or annoy not having been established, the conviction was bad. If a person enters upon land in the possession of another, in the exercise of a bona fide claim

CRIMINAL TRESPASS—*concl'd*

of right without any such intent, he cannot be convicted under s. 447, though he may have no right to the land. *Empress v. Budd Singh*, 1 L. R. 2 All 101, *Re Shastidhar Parua*, 9 B. L. R. App. 19, and *Juralkhan Singh v. King Emperor*, 7 C. L. J. 238, followed. *Anshor Singh v. Rameswar Baidi* (1916). I. L. R. 43 Calc. 1143

CROSS-APPEAL.

See *CONTRACT*. I. L. R. 39 Mad. 509

CROSS-CLAIMS.

under same decree—

See *CIVIL PROCEDURE CODE* (ACT V OF 1908), O. XXI, r. 19
I. L. R. 40 Bom. 60

CROSS-DECREES.

See *CIVIL PROCEDURE CODE*, 1908, O. XXI, r. 18. I. L. R. 38 All 669

CROSS-EXAMINATION.

exhibiting documents during—

See *RIGHT OF REPLY*
I. L. R. 43 Calc. 426

CROSS-OBJECTION.

See *CIVIL PROCEDURE CODE* (ACT V OF 1908), s. 92. I. L. R. 40 Bom. 541

See *SALE*. I. L. R. 43 Calc. 790

CURRENCY NOTE.

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1908), s. 517
I. L. R. 40 Bom. 188

CUSTOM.

See *PRE EMPTION*. I. L. R. 38 All 27

Tribal Custom—Marriage custom, requiring husband to live in wife's parents' household, the children being additions to wife's clan—Custom not immoral or opposed to public policy—Suit for restitution of conjugal rights

to his wife, *Quere*. Whether Lalung are governed

by removal of the wife from her father's house. It was not injurious to the public interests, that is to the interests of the tribe to which the parties belonged, nor was it in conflict with any express law of the ruling power. *Telot Monmahia v.*

CUSTOM—*concl'd*

Basant Kumar Singh, 1 L. R. 28 Calc. 751 s. c. 5 C. W. N. 673, referred to. *Lenga Lalung v. Penguri Lalung* (1915). 20 C. W. N. 408

CUSTOM OF SUCCESSION.

to estate—

See *HINDU LAW—ALIENATION*
I. L. R. 43 Calc. 417

D**DAMAGE.**

remoteness of—

See *SECRETARY OF STATE FOR INDIA*
I. L. R. 39 Mad. 781

DAMAGES.

See *ATTACHMENT BEFORE JUDGMENT*
I. L. R. 39 Mad. 982

See *SPECIFIC PERFORMANCE*
I. L. R. 43 Calc. 59

measure of—

See *SALE OF GOODS*
I. L. R. 43 Calc. 308

suit for—

See *MADRAS ESTATES LAND ACT* (1 OF 1908), s. 180. I. L. R. 39 Mad. 239

See *TORT*. I. L. R. 39 Mad. 433

suit for, against the Secretary of

State for India—

See *TORT*. I. L. R. 39 Mad. 351

unliquidated claim for—

See *LESSOR AND LESSEE*
I. L. R. 39 Mad. 939

Measure of damages—Breach of contract for sale of shares—Breach by buyer—Sale by vendor at various dates after breach at higher prices than those prevailing at date of breach—Sale not in mitigation of damages—Buyer not entitled to benefit of higher rates of sale—Contract (1st IX of 1872) ss. 73 and 107. Under contracts made at various dates between April and August 1911 the appellant agreed to sell to the respondents certain shares to be delivered on 30th December 1911. On that date the shares had fallen largely in value, and on the appellant tendering the shares the respondents declined to take them. Negotiations up to 26th February between the parties not resulting in a settlement, the appellant, after demanding a sum representing the difference between the agreed price of the shares and their value at £3 per share, the market price at the date of the breach of the contract, sold the shares at various dates from 25th February to October, in every case except one at a higher price than £3. In a suit brought on 22nd March

DAMAGES—conclld.

1912 by the appellant for the amount demanded, the Chief Court allowed the respondents the benefit of the increased prices received by sale of the shares by giving them, in mitigation of damages, credit for the prices realised over and above the market price on 30th December, on the date of the breach:—*Held*, by the Judicial Committee (reversing that decision), that on the breach by the respondents their contractual right to the shares fell to the ground; and the appellant thereafter sold shares belonging to himself in order to ascertain the loss arising by reason of the respondents not completing at the contract price. If after the breach the seller holds on to the shares, the speculation as to the way the market will subsequently go is the speculation of the seller, not of the buyer: the seller cannot recover from the buyer the loss below the market price at the date of the breach, if the market falls, nor is he liable to the buyer if the market rises. A plaintiff who sues for damages is bound to take all reasonable steps to mitigate the loss consequent on the breach, and cannot claim any sum due to his own neglect. But the loss to be ascertained is the loss at the date of the breach. *Stanforth v. Lyall*, 7 Bing. 169, followed. The fact that by reason of the loss of the contract which the defendant has failed to perform, the plaintiff obtains the benefit of another contract which is of value to him, does not entitle the defendant to the benefit of the latter contract. *Fates v. Whyte*, 4 Bing. N. C. 272, *Bradburn v. Great Western Railway Co.*, L. R. 10 Exch. 1, and *Jebson v. East and West India Dock*, L. R. 10 C. P. 300, followed. The market rate of the breach is the decisive element. *Rodocanachi v. Milburn*, L. R. 18 Q. B. D. 67, and *Williams v. Agius*, [1914] A. C. 10, followed. This principle applies to a breach by either seller or buyer. Neither section 73 nor 107 of the Contract Act (IX of 1872) could be referred to as in favour of the respondents: the former was only declaratory of the right to damages, and the latter was inapplicable to the present case. *JAMAL v. MOOLLA DAWOOD SONS & Co.* (1915) . . . I. L. R. 43 Calo. 493

DANCING WOMAN.

—— illegitimate son of Sudra by—

See HINDU LAW I. L. R. 39 Mad. 136

DATE OF BIRTH.

See EVIDENCE . . . L. R. 43 I. A. 256

DATTAKA CHANDRIKA.

—— s. 5, paras. 24 & 25—

See HINDU LAW—PARTITION.

I. L. R. 40 Bom. 270

DAUGHTER.

—— suit by, for possession of father's estate—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 2, CL. (11), O. XXII, R. 1

I. L. R. 39 Mad. 382.

DAYABHAGA SCHOOL.

See HINDU LAW—SUCCESSION.

I. L. R. 43 Calc. 1

DEAF AND DUMB ACCUSED.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 341.

I. L. R. 40 Bom. 598

DEATH.

—— presumption of—

See LIMITATION ACT (IX OF 1908), ARTS. 140, 141 . . . I. L. R. 40 Bom. 239

DEBIT.

See MORTGAGE . I. L. R. 39 Mad. 419

DEBT.

See HINDU LAW—DEBT.

I. L. R. 40 Bom. 126

DEBTOR.

—— rights of surety against—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 30, 47, 59, 74 AND 94 . . . I. L. R. 39 Mad. 965.

DEBTOR AND CREDITOR.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 53 . I. L. R. 43 Calc. 521

DECLARATION.

See MUNICIPAL LAW.

L. R. 43 I. A. 243

—— suit for—

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 25, 36.

I. L. R. 40 Bom. 55.

See HINDU LAW—COPARCENER.

I. L. R. 40 Bom. 329

• See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 5, 6, 7 AND 14.

I. L. R. 39 Mad. 727

DECLARATION AND INJUNCTION:

—— suit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 110 . I. L. R. 40 Bom. 477

DECLARATION OF TITLE.

See LESSOR AND LESSEE.

I. L. R. 39 Mad. 1042

DECLARATORY DECREE.

See DECLARATORY DECREE, SUIT FOR.

—— effect of—

See DIGWARI TENURE.

I. L. R. 43 Calc. 743

DECLARATORY DECREE, SUIT FOR.

—— Specific Relief Act (I of 1877), s. 42—Suit by alleged reversioner for declaration of title—Legal interest or character necessary to support claim—Suit to revoke probate.

DECLARATORY DECREE, SUIT FOR—*contd.*

after will had been affirmed by Probate Court—*Suit by reversioner to prevent waste by Hindu widow, not analogous—Rule of res judicata, origin and application of—Rule existing in Hindu as well as English law* On an application to the District Court, by the first respondent, for probate of the will of B, a Hindu who died leaving two widows but no male issue, the appellants entered a caveat denying the genuineness of the will, and asserting that they were the reversioners of B and had therefore a *locus standi* to oppose the grant of probate. The District Court held that the caveators had failed to prove their interest, and granted probate of the will to the first respondent as executor by implication. The High Court on appeal affirmed that decision, and the appellants without any further appeal instituted a suit in the Subordinate Judge's Court against the first respondent and the two widows for a declaration that they were the next reversioners to the estate of B according to Hindu Law in the

by the decision of the District Court in the probate proceedings. *Held*, by the Judicial Committee (without deciding the question of *res judicata*) that the suit was not maintainable with reference to section 42 of the Specific Relief Act (I of 1877) the will had been affirmed by a Court of appropriate jurisdiction and its decision could not be impugned by a Court exercising a different jurisdiction for the purposes of the suit the will must stand, and there was no intestacy. The appellants had therefore shown no legal character or title which would justify them in asking for the declaration sought, and the suit must be dismissed as misconceived and incompetent. The right of a reversioner to sue where a widow in possession for her life estate was committing acts of waste to the prejudice of those who might succeed to the property on her death, was not analogous such a position necessarily assumed the absence of an immediate and absolute testamentary disposition. Suits of that kind formed a very special class and the question in them was not solely between the reversioner and the widow, the former being unable by such a suit to get as between himself and a third party an adjudication of title which he could not obtain without it. *Kothama Natchiar v Dorasinga Tevar*, L R 2 I 1 369, referred to. *See* The rule of *res judicata* while founded on ancient precedent is dictated by a wisdom which is for all time. *see* 6 Coke's Institutes 94. Though the rule may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu Commentators. *Vijnanesvara* and *Nilakantha* include the plea of a former judgment among those allowed by law, citing for this purpose a text of *halayana*. *see* *Nilakantha* (Vijayahara) Book II, Ch. 1 (edited by

DECLARATORY DECREE, SUIT FOR—*concl'd*

J R Gharpure), p 14, and *Mayukha*, Ch I, a 1, p 11, of Mandlik's edition. The application of the rule by the Courts in India should therefore be influenced by no technical considerations of form but by matter of substance within the limits allowed by law. *Sheoprasad Singh v Ramavandan Prasad Singh* (1916)

L. L. R. 43 Calc. 094

DECREE.

See AWARD DECREE

See DECREE AGAINST A MINOR AS MINOR

See DECREE FOR POSSESSION

See EXECUTION OF DECREE.

See EX PARTE DECREE

See FINAL DECREE

L. L. R. 39 Mad. 456

See LESSOR AND LESSEE

L. L. R. 39 Mad. 1042

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 88, 89

I. L. R. 40 Bom. 321

— against company, before liquidation—

See COMPANIES ACT (VII OF 1913) s 207

L. L. R. 33 All. 407

— against widow for husband's debt—

See HINDU LAW—WIDOW

L. L. R. 39 Mad. 565

— assignment of—

See SPECIFIC PERFORMANCE.

L. L. R. 43 Calc. 990

for less than amount claimed—]

See CIVIL PROCEDURE CODE (1909), O

XXIII, rr 10 AND 11

L. L. R. 39 All. 469

— in mortgage suit—

See CIVIL PROCEDURE CODE (ACT V OF 1909), s 47, O XXII, r 10

L. L. R. 39 Mad. 488

— nature of—

See LIMITATION ACT (IX OF 1903), ss 132 AND 75

I. L. R. 39 Mad. 991

passed in ignorance of the death of one of the respondents—

See APPEAL, PARTIES TO AN

L. L. R. 39 Mad. 388

— suit to set aside—

See MISTAKE

L. L. R. 43 Calc. 217

— without evidence—

See EX PARTE DECREE.

L. L. R. 43 Calc. 1001

I. ———— Decree of competent Court, if may be challenged in a fresh suit—*Erud practised on the Court, to be proved—Ex parte mortgage decree set aside against one defendant—*

DECREE—contd.

Re-hearing, fresh decree against all—Application for order absolute in respect of later decree, opposed by defendants against whom previous decree not set aside—Objection overruled and decree made absolute—Suit to set aside decree on same grounds, if competent—Merger of first decree in second, whether there is—First decree, whether impliedly set aside.
Upon an application to set aside an *ex parte* mortgage decree passed against P, R and B, it was found that there was no proper service of summons upon B, and upon a re-hearing, a new and comprehensive decree against all three defendants was passed. The decree-holder's application for an order absolute in respect of this decree was opposed by R on the ground that he was no party at the re-hearing and that the previous decree against him never having been set aside, a second decree in respect of the same matter could not be legally made against him. The objections were overruled and a decree absolute was made against all the defendants. R then brought the present suit for a declaration upon the same grounds that the second decree was ineffectual and void as against him. *Held*, that the suit was equivalent to a suit for the rescission and destruction of a former decree of a competent Court—a relief which could not be obtained except on the ground of fraud practised upon the Court which made the decree. A challenge of the method of the exercise of the jurisdiction of a Court—a challenge which has reference to the merits of the case—can never in law justify a denial of the existence of such jurisdiction.
RAJWANT PRASAD PANDE v. MAHANT RAM RATAN GIR (1915) 20 C. W. N. 35.

2. — *Execution of decree—Partition not in accordance with the direction of the decree—Wrongful distribution of shares—Mistake—Collector's power to re-open partition—Court's duty to rectify mistake of its agent.* One Atmaram Bhagwant, a member of a Mirasi family, brought a suit for partition of his 1-36th share in three villages. In November 1888 a decree was passed directing that the half share of the Desai family in each of the three villages should first be separated and the remaining share divided between the members of the Mirasi family in accordance with the decree. Atmaram applied for execution of the decree in Darkhast No. 127 of 1893, but before partition was made on this application, defendant No. 8 filed Darkhast No. 404 of 1894 for his share. Those Darkhasts were disposed of in 1898 when defendant No. 8's share was separated and given into his possession. The appellants (defendants Nos. 10—12) then applied for separate possession of their share in 1900 but when the surveyor prepared a list of lands remaining over after the first partition as the share of the appellants, the latter found that the Khasgi land in one of the villages remaining for their share was less than what they were entitled to and that the plots below and adjoining their houses had been allotted to the share of defendant No. 8. They then

DECREE—contd.

applied to the Collector to re-open partition. The Collector declined to do this and referred the matter to the Court on the ground that the appellants refused to take possession of their shares. The appellants, therefore, applied to the Court for fresh partition and determination of their legitimate share. The lower Courts dismissed their application as being barred by *res judicata*. On appeal to the High Court: *Held*, granting the application, that the Court would not allow a mistake of one of its agents in carrying out its directions to work permanent injustice.
RAMOHANDRA DINKAR v. KRISHNAJI SAKHARAM. I. L. R. 40 Bom. 118 (1915)

3. — *Execution of the decree passed by Baroda Court—Application for execution presented to Baroda Court though within time according to Baroda law, still out of time according to British Indian law—Transfer of decree to British Indian Court—Execution barred by limitation.* A decree was passed by the Baroda Court in 1909. The first application to execute the decree was made in 1913, it being within the time prescribed by the law in Baroda. The decree was transferred to the Ahmedabad Court (British) for execution in 1915, where the judgment-debtor contended that no application to execute the decree having been made within three years of its date, the execution of the decree was barred. *Held*, that the decree was incapable of execution in the Ahmedabad Court having been barred according to the British Law of Limitation which governed the case. **NABIBHAI VAZIRBHAI v. DAYABHAI AMULAKH (1916).** I. L. R. 40 Bom. 504

4. — *Suit, decision of, in the absence of defendant—Summons against one of two defendants residing outside British India returned unserved—Compromise of suit by the other defendant both for himself and the absent defendant acting on power of attorney empowering management of business and institution, conduct and defence of suits—Compromise decree if binding on absent defendant—Decree set aside even as against defendant present on the ground of decree being indivisible.* The plaintiff and the four defendants were partners. The first three defendants brought a suit against the plaintiff and the fourth defendant for dissolution of partnership and other incidental reliefs. The plaintiff was at the time admittedly residing outside British India in Rajputana and the summons which was issued against him was returned by the Political Agent at Rajputana with the remark that it was impossible to serve it upon the defendant in time as the date fixed for the hearing of the case was too close at hand. Before the summons so returned had reached the Court the suit was compromised by the fourth defendant both for himself and the plaintiff. The fourth defendant professed to represent the plaintiff on the basis of a power of attorney in his favour which authorised him to manage the partnership business, to continue institute, prosecute, defend or oppose all suit

DECREE—cond

that were or might be brought by or against the executant in respect of his business and property. The plaintiff sued to have the compromise decree set aside. *Held*, that the Code contemplates service of summons upon the party sought to be made liable and the position in the present case being in substance the same as if no summons had ever been served on the defendant.

stances as in the—
summons issued against the defendant was returned unserved may be set aside on the ground that the defendant must in essence be a party to the suit before the plaintiff can have judgment against him. That the decree was also liable to be set aside on the ground that the power of attorney did not authorise the fourth defendant to bind the plaintiff by the compromise. That the decree was liable to be set aside not only in so far as the plaintiff was concerned but also with regard to the fourth defendant because the decree on the face of it was indivisible and could not be set aside in part. That the effect of the order of the High Court was to discharge the entire decree in the suit and to revive it for retrial. *CHATTERJEE BRAHMEN v. DURGADUTT AGARWALLA* (1916). 20 C W N. 943

DECREE AGAINST A MAJOR AS MINOR.

Court sale in execution of decree, validity of—Limitation Act (13 of 1906) Art 12, applicability of. A decree obtained against a person treating him as a minor while in reality he was a major on its date is not a nullity, consequently a sale in execution of such a decree cannot be set aside on the ground that the Court had no jurisdiction to pass the decree. The period of limitation to apply to set aside the court sale is one year as provided by Article 12 of the Limitation Act. *BENHAGIRI RAO v. HANUMANTHA RAO* (1915).

I. L. R. 39 Mad. 1031

DECREE FOR POSSESSION.

Decree holder obtaining possession of the property without executing the decree—Subsequent dispossession—Maintainability of a fresh suit—Doctrine of merger where applicable. The doctrine of merger does not apply to a decree for ejectment. If a party obtains a decree for a debt or for damages for tort, the original cause of action merges in the decree, but a decree in ejectment differs very much from other decrees. Plaintiff obtained a decree for possession of certain immovable property which she did not put into execution for over three years, but had obtained actual physical possession over the property. She was subsequently dispossessed and brought a suit for possession. *Held*, that as she had been in actual possession of the property, a fresh cause of action had accrued and her suit was maintainable being within twelve years of such dispossession. *Quare*

DECREE FOR POSSESSION—oncl

Whether a suit is maintainable upon a decree when the execution of it has become time barred. *DHATRAJ SINGH v. LAHRIANI KUNWAR* (1916). I. L. R. 33 All. 509

DECREE-HOLDER.

See CIVIL PROCEDURE CODE (ACT XIV of 1882), s 258

I. L. R. 39 Mad. 1036

DEED, CONSTRUCTION OF.

See CONSTRUCTION OF DEEDS

DEFAMATION

See TORT I. L. R. 39 Mad. 433

DEFAMATORY STATEMENT.

—made outside British India—

See TORT I. L. R. 39 Mad. 433

DEFAULT.

See MORTGAGE I. L. R. 39 Mad. 981

DEFENCE.

—struck out—

See FOREIGN JUDGMENT

I. L. R. 39 Mad 95

DEFENDANT.

—misdescription of—

See PLAINT I. L. R. 43 Calc. 441

DEKHKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

Redemption suit—Tagori advance by Government, nature of—Tuction sale for non payment of the advance—Demand for purchase by the mortgagee—Advantage gained in derogation of the rights of the mortgagor—Purchase causes for the benefit of the mortgagor—Indian Trusts Act (11 of 1852) s. 90—Transfer of Property Act (11 of 1852) s. 76, clause (c)—Land Revenue Code (Dom let V of 1879), s. 28 153—Land Improvement Loans Act (XIV of 1883), s. 7 One B passed a San mortgage of the properties in suit in favour of A on the 26th September 1894. After B's death his widow A, for herself and on behalf of her minor daughter, the plaintiff, executed a fresh possessory mortgage in favour of defendant No. 1, in 1903, and put him in possession. Before the date of this mortgage, A had obtained a *tagori* advance from Government on survey No. 311 which was included in the mortgage. In 1905 survey No. 311 was sold by public auction for the arrears of *tagori* and was purchased by defendant No. 1 through his *gumasta* defendant No. 2. On the 4th August 1909 defendant No. 1 assigned his mortgage rights to defendant No. 3 and on the same day defendant No. 2 sold survey No. 311 to defendant No. 3. In 1912 the plaintiff sued to redeem the survey number along with the other mortgaged property under the provisions of the Dekkhan Agriculturists' Relief Act, 1879. The defendants

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

No. 3 contended that since the sale the plaintiff had no right left in survey No. 311 and was not entitled to redeem it. On these pleadings the question arose for consideration whether the *lagari* dues were a charge of a public nature which the mortgagee was bound to pay and whether the sale having taken place the provisions of s. 56 of the Land Revenue Code would apply so as to leave no room for the application of s. 90 of the Indian Trusts Act with reference to the conduct of the mortgagee. *Held*, that the *lagari* advance was a charge of a public nature within the meaning of clause (c) of s. 76 of the Transfer of Property Act, 1882. It was a Government demand accruing due in respect of the land while it was in possession of the mortgagee. *Held*, also, that the sale having taken place owing to the default of the mortgagee, s. 90 of the Indian Trusts Act applied. *Held*, further, that s. 56 of the Land Revenue Code did not apply as it was held as a fact that there had been no forfeiture such as would be a necessary condition precedent under s. 153 of the Land Revenue Code to the application of the provisions of s. 56 for the purposes of recovering dues as arrears of land revenue. **CHITRA BICHA v. BAI JAMNI (1916)**

I. L. R. 40 Bom. 483

ss. 3, cl. (y) and 10 A—*Suit for possession under a sale-deed—Contemporaneous lease—Nature of suit—Intention of parties.* The plaintiff relying on his sale-deed of 1887 sued to recover possession of the land in suit alleging that the defendant held it as his tenant under a lease of even date with the sale-deed. The defendant pleaded that his father and not the plaintiff was the purchaser under the deed of 1887, that the plaintiff was the savkar (creditor) who advanced money and the payment of interest was secured by the contemporaneous lease. Both the lower Courts went into the question of intention of the parties under s. 10A of the Dekkhan Agriculturists' Relief Act and found the defendant's case established on facts. On appeal to the High Court. *Held*, that the case was rightly disposed of under s. 10A of the Dekkhan Agriculturists' Relief Act. The nature of the suit under clause (y) of s. 3 of the Act should not be determined by the frame of the plaint, but by the allegations of the parties which raised the question of mortgage or no mortgage. **GAUTAM JAYACHAND v. MALHARI (1916)**

I. L. R. 40 Bom. 397

ss. 3 (w), 12 and 13—*Suit for redemption—Mortgage superseded by consent-decree—Allegation of fraud—Form and reality of the suit.* The plaintiff's father executed a mortgage in 1894. In 1899, the mortgagee sued the mortgagor for the recovery of the mortgage debt and for sale of the property. In 1900, there was a consent-decree by which a new sum was taken as capitalized principal and provision was made for payment of money by instalments. The security under this arrangement differed in some parti-

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

s. 3—*contd.*

culars from the security of the earlier mortgage. On the same day as this consent-decree was obtained, Survey No. 50, which was included in the older mortgage but was excluded from the purview of the consent-decree, was sold by the mortgagor to the mortgagee. In 1903, the mortgagee obtained possession of the property and since then remained in possession. In 1911, the plaintiffs brought a suit to redeem the mortgage of 1894 by setting aside the consent-decree and the sale deed alleging that they were obtained by fraud, coercion and misrepresentation. *Held*, that the suit though in form a redemption suit was in reality a suit to set aside a sale deed and a Court's decree and then to recover property of which the plaintiffs had been fraudulently deprived. Such a suit is outside the provisions of the Dekkhan Agriculturists' Relief Act, 1879. **BACHI v. BIKHCHAND, 13 Bom. L. R. 56**, applied. S. 3, clause (u) of the Dekkhan Agriculturists' Relief Act, 1879, contemplates either *simpliciter* or primarily and substantially a mortgage suit. **VINAYAKRAO BALASABHE v. SHAMRAO VITHAL (1916)** . . . **I. L. R. 40 Bom. 655**

s. 15 B—*Payment by instalments—Default in payment—Order for sale of necessary portion of property under s. 15 B (2)—Application to make the decree final under Order XXXIV, rule 5 (2) of the Civil Procedure Code, not necessary.* A decree-holder for sale upon a mortgage, in default of payment of instalments order under s. 15 B (1) of the Dekkhan Agriculturists' Relief Act (XVII of 1879), need not apply under Order XXXIV, rule 5 (2) of the Civil Procedure Code to make the decree final before he can apply for sale of the necessary portion of the property under s. 15 B (2) of the Act. **KASHINATH VINAYAK v. RAMA DASI (1916)**

I. L. R. 40 Bom. 492

s. 22—*House of agriculturist—Exemption from sale—Exemption not confined to cases of contractual debts but extends to restitution proceedings—Civil Procedure Code (Act V of 1908), s. 144.* The defendants paid into Court a sum which they had to pay under a decree, and at the same time preferred an appeal against the decree. The sum paid into Court was taken away by the plaintiff. The appeal filed by the defendants was successful: the decree was reversed and the suit ordered to be retried. The defendants thereupon applied under the provisions of s. 144 of the Civil Procedure Code, for restitution of money paid by them; and prayed for an order to sell the plaintiff's house in case he failed to make the restitution. The plaintiff contended that he being an agriculturist his house could not be sold, by virtue of the provisions of s. 22 of the Dekkhan Agriculturists' Relief Act, 1879. The lower Courts negatived the contention on the ground that the provisions of s. 22 applied only in cases of contractual debts and not to

DEKKHAN AGRICULTURISTS' RELIEF ACT
(XVII OF 1879)—*could*s. 22—*can* id.

restitution proceedings. The plaintiff having appealed—*Held*, that if the plaintiff was an agriculturist, his house was immune from sale under a 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The true construction of s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is, first, a general provision that immovable property belonging to an agriculturist shall always be immune from sale, and, secondly, a *proviso* directing that this immunity is subject to exception where the two following conditions are both satisfied, that is to say, (a) where the decree or order in question relates to the repayment of a debt, and (b) where the agriculturist's property has been specially mortgaged for the payment of that debt. The limiting words referring to a debt occur only in the *proviso* and cannot be imported into the main rule so as to restrict its express generality. *MURADO RANGNATH & RAMA PUKARAM* (1915)

I. L. R. 40 Bom. 194

s. 72—*Agriculturist—Status at the time when the cause of action arises—Sons of original debtor, not in existence at the date of the cause of action, are yet within the statute—*"Person" meaning of. The defendants father passed a registered bond to the plaintiff in 1900, the cause of action under which accrued in 1901. In 1912, the plaintiff filed a suit to recover moneys due under the bond and tried to bring his claim in time by reference to the provisions of s. 72 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The defendants contended that the section did not apply, for at the time the cause of action arose in 1901, they were not only not agriculturists but were not in existence at all. The lower Court negatived the contention and decreed the suit. The defendants having appealed—*Held* that the suit fell within the scope of s. 72 of the Dekkhan Agriculturists' Relief Act, and that the plaintiff was entitled to the extended limitation. The word "person" in s. 72 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is equivalent to the word "defendant" which occurs in s. 3, cl (x) of the Act. *PIR RAJTA & ANNAJI APPAJI* (1917)

I. L. R. 40 Bom. 189

DEMONSTRATIVE LEACACY.

See WILL. I. L. R. 43 Cal. 201

DEPENDENT RELATIVE REVOCATION.

doctrine of—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 107

DEPOSIT IN COURT.

I. ———— *Judgment-debtor—Transfer of the judgment-debtor—hereditary Tenancy Act (111 of 1853), s. 174—Sale, voluntary or otherwise.* An application under s. 174 of the hereditary Tenancy Act can be made by the judgment-debtor alone

DEPOSIT IN COURT—*could*

and by no other person. *Ranjit Kumar Ghosh & Jogendra Nath Ray, 16 C L J 546*, referred to *SURENDRAP NARAYAN SINGH & LACHMI KOER* (1915) I. L. R. 43 Cal. 100

2. ———— *Money paid under compulsion of Law—H out of bond fides—Action for recovery of money—Civil Procedure Code (Act V of 1908), O XXI, r 46, cl (1)—Attachment of debt due to a stranger on the allegation that the garnishee's creditor was benamidar of the judgment debtor—Deposited by garnishee, conditional, on enquiry—Withdrewal of the money from Court by the attaching creditor without notice to the garnishee—Court's power of enquiry.* Where debt due to a stranger was attached on the allegation that he was benamidar of the judgment debtor and the attaching creditor withdrew the money by leave of the Court without notice to the garnishee, in a suit by the latter for the recovery of the money deposited, it being found that there was no benami transaction as alleged *Held*, that the rule that money paid under compulsion of a legal process was irrecoverable can only be pleaded where the party who has got the benefit of his opponent's payments, acts *bona fide*. *Marriott & Hampton, 7 T R 269*, distinguished *Hard & Co v Wallis, [1900] 1 Q B 675* followed. Clause (3) r 46 of O XXI of the Civil Procedure Code does not contemplate of cases where the deposit was purely conditional on enquiry being held as to judgment-debtor's rights and a withdrawal by the attaching creditor of the money so conditionally deposited, without notice to the garnishee, even though made with the leave of the Court, is a grave abuse of judicial process. It is true that O XLVI does not expressly contemplate of an enquiry as is enjoined in O V, rule 45 of the Rules of the Supreme Court in England, but the Court has inherent power to enquire. *HARINATH CHOWDHURI & HARADAS ACHARJYA CHOWDHURI* (1915)

I. L. R. 43 Cal. 269

DEPOSIT OF MONEY.

into Court, time for—

See EX PARTE DECREE.

I. L. R. 39 Mad. 583

DEPOSIT OF SECURITY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXXVIII, r. 5

I. L. R. 39 Mad. 903

DEVOLUTION OF INTEREST.

See LIMITATION I. L. R. 43 I. A. 113

DIOWARI TENURE.

Disputes of Ghat Bhatta in district Bankura—Appointments made by Government—Whether any relief thereto could be given by the Civil Courts—Declaratory decree, effect of. Where the Magistrate of Bankura sanctioned the plaintiff's appointment as Diowar in succession to his deceased father, the last holder, but the Commissioner cancelled it on a *munafaka*

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

No. 3 contended that since the sale the plaintiff had no right left in survey No. 311 and was not entitled to redeem it. On these pleadings the question arose for consideration whether the *tagari* dues were a charge of a public nature which the mortgagee was bound to pay and whether the sale having taken place the provisions of s. 56 of the Land Revenue Code would apply so as to leave no room for the application of s. 90 of the Indian Trusts Act with reference to the conduct of the mortgagee. *Held*, that the *tagari* advance was a charge of a public nature within the meaning of clause (c) of s. 76 of the Transfer of Property Act, 1882. It was a Government demand accruing due in respect of the land while it was in possession of the mortgagee. *Held*, also, that the sale having taken place owing to the default of the mortgagee, s. 90 of the Indian Trusts Act applied. *Held*, further, that s. 56 of the Land Revenue Code did not apply as it was held as a fact that there had been no forfeiture such as would be a necessary condition precedent under s. 153 of the Land Revenue Code to the application of the provisions of s. 56 for the purposes of recovering dues as arrears of land revenue. *CHUNTA BHULA v. BAI JAMNI* (1916)

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DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

s. 3—*concl.*

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I. L. R. 40 Bom. 655

s. 15 B—*Payment by instalments—*

Default in payment—Order for sale of necessary portion of property under s. 15 B (2)—Application to make the decree final under Order XXXIV, rule 5 (2) of the Civil Procedure Code, not necessary. A decree-holder for sale upon a mortgage, in default of payment of instalments order under s. 15 B (1) of the Dekkhan Agriculturists' Relief Act (XVII of 1879), need not apply under Order XXXIV, rule 5 (2) of the Civil Procedure Code to make the decree final before he can apply for sale of the necessary portion of the property under s. 15 B (2) of the Act. *KASHINATH VINAYAK v. RAMA DAJI* (1916)

I. L. R. 40 Bom. 492

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1. Transcript of the meeting
 At 10:00 AM on 10/10/10, the meeting was held in the conference room of the [redacted] office. The meeting was attended by [redacted] and [redacted]. The meeting was chaired by [redacted]. The agenda for the meeting was as follows:

EASEMENTS ACT (V OF 1882)—concl'd.

s. 15—concl'd.

Prescriptive user, period necessary for—Indian Evidence Act (I of 1872), ss. 123, 124 and 163—Confidential communications, test of. In a suit to establish right of user by prescription against Government, the plaintiff is bound to prove under the last clause of s. 15 of the Indian Easements Act, sixty years' user. *The Secretary of State for India v. Kota Bapanamma Garu, I. L. R. 19 Mad. 165*, distinguished. The object of s. 124 of the Evidence Act is to prevent disclosures to the detriment of public interests and the decision as to such detriment rests with the officer to whom the communication is made and does not depend on the special use of the word "confidential." *Venkatachella Chettiar v. Sampathu Chettiar, I. L. R. 32 Mad. 62*, followed. **NAGARAJA PILLAI v. THE SECRETARY OF STATE (1914)** . . . **I. L. R. 39 Mad. 304**

EAST INDIA COMPANY.

non-liability of—

See TORT . . . **I. L. R. 39 Mad. 351****EJECTMENT.**

See LANDLORD AND TENANT.

I. L. R. 43 Calc. 164

See TENANTS-IN-COMMON.

I. L. R. 39 Mad. 1049

suit for, subsequent to alienation—

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (12).

I. L. R. 39 Mad. 930

suit in, against trespasser—

See RIGHT OF SUIT.

I. L. R. 39 Mad. 501**EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915).**

_____, if *ultra vires*—Ordinances III and V of 1914—Power of Governor-General in Council to pass Act embodying provisions of ordinances—Ordinance III of 1914, s. 11, effect of—Jurisdiction of Courts to question orders of internment passed under Emergency Legislation Continuance Act—Indian Councils Act, 1861 (24, 25 Viet. c. 67), ss. 22, 23. Under s. 23 of the Indian Councils Act, 1861 (24, 25 Viet., c. 67), no ordinance can have any force of law for more than six months from its promulgation, but the power of the Governor-General in Council to pass an Act embodying the provisions of an ordinance is in no matter controlled or taken away by that section. It is clear that the Governor-General in Council has power to pass an Act like the Emergency Legislation Continuance Act (I of 1915) which embodies the provisions of Ordinances III and V of 1914: 1914 which is embodied in the Emergency as s. 11 of the Ordinance No. III of 1914 which is embodied in the Emergency Legislation Continuance Act of 1915 seeks to oust

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915)—concl'd.

the jurisdiction of the Courts it offends against s. 22 of the Indian Councils Act, 1861, that the Emergency Legislation Continuance Act of 1915 is not *ultra vires* of the Governor-General in Council and the High Court has not power to call in question orders passed thereunder. It is for the Governor-General in Council to be satisfied on the materials before them and the Court cannot call for the materials or examine them. In England the common law rule that when an Act is repealed and the repealing Act is repealed by another which manifests no intention that the first shall continue repealed the repeal of the second Act revives the first does not apply to repealing Acts passed since 1850 and the last repeal does not now revive the Act or provisions before repealed unless words be added reviving them. The same principle, or rule of law applies to this country. S. 3 of the General Clauses Act (I of 1868) expressly provided that for the purpose of reviving either wholly or partially a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose, and the same is the effect of ss. 6 and 7 of the General Clauses Act (X of 1897). *In the matter of JEWIA NATHOO (1916)*.

20 C. W. N. 1327**EMOLUMENTS.**

partition of—

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (2),

I. L. R. 39 Mad. 930**ENCUMBRANCE.**

See INCUMBRANCE.

See SALE . . . **I. L. R. 43 Calc. 263**

by co-sharer—

See JOINT ESTATE.

I. L. R. 43 Calc. 103**ENDORSEMENT.**

See VAKALATNAMA.

I. L. R. 43 Calc. 884**ENDORSEMENT OF DOCUMENT.**

admitted as evidence—

See MAHOMEDAN LAW—GIFT.

I. L. R. 38 All. 627**ENMITY OR HATRED.**

dissemination of—

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 591**EQUITABLE MORTGAGE.**See MORTGAGE . **I. L. R. 43 Calc. 895****EQUITY OF REDEMPTION.**See MORTGAGE . **I. L. R. 38 All. 411**

See REDEMPTION .

EQUITY OF REDEMPTION—*concl'd*

— acquisition of, by trespassers—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 65 (c)

I. L. R. 39 Mad. 959

ESTATE.

— absolute or limited—

See HINDU LAW—WILL

I. L. R. 38 All. 448

— falling into possession—

See EXPECTANCIES

I. L. R. 39 Mad. 554

ESTATES PARTITION ACT (BENG. V OF 1897).

s. 99—

See JOINT ESTATE

I. L. R. 43 Calc. 103

ESTOPPEL.See EVIDENCE ACT (I OF 1872), s 116
I. L. R. 38 All. 226

See HINDU LAW—PARTITION

I. L. R. 39 Mad. 587

— doctrine of feeding the—

See EXPECTANCIES

I. L. R. 39 Mad. 554

1. — *Lessee induced on land by a void lease if may plead lease void and created no rights—Lease registered in contravention of the law—Suit for damages for breach of covenant—Estoppel* In a suit for damages by a lessor against a lessee for breach of a covenant contained in a registered lease purporting to have been granted by the lessor as tenure holder to the lessee as under-tenure holder, it was found that in fact the lessor was an occupant raiyat, and the lessee urged that the lease, having been granted and registered in contravention of s 83 of the Bengal Tenancy Act, was void and inoperative. *Held*, that the lessee was estopped from showing that the lease was void and that no interest passed to him. *Bhaganta Dewah v Himmat Badgalar*, 20 C W N 1335, followed. That the Court was not precluded from so holding by the previous decisions of the High Court. *BANAYDAS BHATTACHARYA v NIRMALBHAI SAHA* (1916) 20 C. W. N. 1340

2. — *Mortgage, suit for redemption if—Mortgagee if can deny mortgagor's title* A mortgagee cannot resist a claim for redemption on the ground that the mortgagor had no title to the property included in the mortgage although he may establish that the title of the mortgagor has expired since the creation of the mortgage, it not being open to him to prove that the mortgagor lost his rights before the mortgage was executed. *ABRAHAM SIL v HARA CHANDRA DAS* (1917) 20 C. W. N. 1231

EUROPEAN BRITISH SUBJECT.

Summary trial outside
British India by Justice of Peace—Jurisdiction—

EUROPEAN BRITISH SUBJECT—*concl'd*.

Criminal Procedure Code (Act I of 1898), s 350
The orders of the Governor General in Council regulating the powers of the Justice of Peace beyond the limits of British India confer no power on a District Magistrate to try offenders summarily under a 260 of the Code of Criminal Procedure (Act V of 1898) *Re JEREMIAH* (1915) I. L. R. 39 Mad. 942

EVIDENCE.

See CRIMINAL PROCEDURE CODE, s 312
I. L. R. 38 All. 291

See ENDORSEMENT OF DOCUMENT
I. L. R. 38 All. 627

See EVIDENCE ACT (I OF 1872)

See OATHS ACT (X OF 1873), ss 3, 6
AND 13 I. L. R. 38 All. 49

See REST DECREE
I. L. R. 43 Calc. 170

See SECURITY FOR KEEPING THE PEACE
I. L. R. 38 All. 468

See WILL
I. L. R. 40 Bom. 1

— of value of the subject matter—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 110 I. L. R. 40 Bom. 477

1. — *Evidence—Infancy—Date of Birth—Family Record—Admissibility—Illustrations to Statute—Straits Settlements Ordinance 111 of 1893, and Indian Evidence Act (I of 1872), s 32, sub s (5) and Illustration (f)* In an action in the Straits Settlements to recover the amount due upon certain mortgages, the defendant pleaded that he was an infant when he executed them. As evidence in support of this plea there was tendered at the trial an entry recording the date of the defendant's birth made by the defendant's deceased father in a book in which he made similar entries with regard to his family. *Held*, that under the Straits Settlements Evidence Ordinance, 1893, s. 32, sub s. (1) and having regard to illustration (f) to that section, the entry was admissible in evidence. Illustrations appended to sections of a Statute should be accepted, if that can be done, as being of relevance and value in construing the text, they should be rejected as repugnant to the section only as the last resort of construction. *MAHOMED SIEBOL AMIRIN v YEON OOI GABE* I. L. R. 43 L. A. 256

2. — *Secondary evidence—Certified copy of petition of compromise made in 1857—Record of proceedings destroyed in the Mutiny—Evidence to establish mortgage in suit for redemption of mortgage not made in writing—Stamp—Bengal Regulation X of 1829—Objection that certified copy is insufficiently stamped—Petition treated as document creating mortgage* In a suit for the redemption of a usufructuary mortgage alleged to have been created in 1857, the document on which the plaintiffs relied to establish the mortgage was a certified copy of a petition of com-

EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE (1908), s. 144 . I. L. R. 38 All. 240

See CIVIL PROCEDURE CODE (1908), s. 145; O. XXXIV, r. 14.

I. L. R. 38 All. 327

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, r. 2.

I. L. R. 40 Bom. 333

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 2 . I. L. R. 38 All. 204

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 16 . I. L. R. 38 All. 289

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, r. 19.

I. L. R. 40 Bom. 60

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 63 . I. L. R. 38 All. 72

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 66 . I. L. R. 38 All. 481

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 89.

I. L. R. 40 Bom. 557

See CIVIL RULES OF PRACTICE, r. 161.

I. L. R. 39 Mad. 485

See DECREE . I. L. R. 40 Bom. 118

See DECREE AGAINST A MAJOR, AS MINOR.

I. L. R. 39 Mad. 1031

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 22.

I. L. R. 40 Bom. 194

See HINDU LAW—COPARCENER.

I. L. R. 40 Bom. 329

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 165, 181.

I. L. R. 38 All. 339

See PRACTICE . I. L. R. 43 Calc. 285

See PROVINCIAL SMALL CAUSE COURTS ACT (VII OF 1887), s. 25.

I. L. R. 38 All. 690

See REVIVOR . I. L. R. 43 Calc. 903

See SALE IN EXECUTION OF DECREE.

1. ————— Decree-holder—Payment of money by judgment-debtor by way of interest—Notification of the payment to Court—Certification of the payment—Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Limitation Act (XV of 1877), ss. 19, 20. A decree-holder who has received a certain sum of money by way of payment of interest, might either apply to certify payment before execution or might do so on his application for execution of the decree. On the 17th February, 1906, the plaintiff obtained a decree and on the 18th May, 1911, he applied for execution. At the time of the application he notified to the Court that he had received a certain sum on the 19th June, 1908, from the judgment-debtor towards interest and alleged that the execution was not barred by limitation:—Held,

EXECUTION OF DECREE—concl'd.

that the notification to the Court of the receipt of the sum paid by the judgment-debtor was all that the decree-holder had to do in order to certify payment, and O. XXI, r. 2 of the Code of Civil Procedure did not stand in the way. *EUSUFF-ZEMAN SARKAR v. SANCHIA LAL NAHATA* (1915).
I. L. R. 43 Calc. 207

2. ————— Sale of zamindari rights—Whether buildings pass with the zamindari or not. The doctrine that the sale by auction of a zamindari share includes also buildings situated within the zamindari, is only applicable in the absence of evidence indicating an intention to exclude such buildings from the sale. *Abu Hasan v. Ramzan Ali*, I. L. R. 4 All. 381, distinguished. *SAKHAWAT ALI SHAH v. MUHAMMAD ABDUL KARIM KHAN* (1915) . I. L. R. 38 All. 59

EXECUTION SALE.

Execution sale set aside for irregularities of decree-holder—Right of purchaser to return of poundage fees and to interest on purchase money—Right of suit—Civil Procedure Code (Act V of 1908), O. XXI, r. 93, no bar by. A Court-sale was set aside on account of irregularities in its conduct, perpetrated by the decree-holder. The purchaser thereupon filed a suit for a return of the poundage fees not returned to him and interest on the purchase money paid by him. Held (overruling the objection that remedy for the return of the poundage fees lay only in execution), that a suit was maintainable for the recovery of the same. *Powell v. Powell*, 19 Eq. 422, followed. The poundage fee is really part of the purchase money paid. Held, also, that the purchaser was entitled to interest on the purchase money paid by him. *Raghubir Dayal v. The Bank of Upper India, Limited*, I. L. R. 5 All. 364, followed. *PARVATHI AMMAL v. GOVINDASAMI PILLAI* (1915) . I. L. R. 39 Mad. 803

EXECUTOR.

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

See LIMITATION . I. L. R. 43 I. A. 113

See PROBATE . I. L. R. 40 Bom. 666

See WILL . I. L. R. 40 Bom. 1

EXECUTORSHIP.

renunciation of—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

EXECUTRIX.

death of—

See PROBATE . I. L. R. 43 Calc. 625

EXPECTANCIES.

Contracts for sale of validity of—Transfer of Property Act (IV of 1882), s. 6—Indian Contract Act (IX of 1872), s. 2d—Estate falling into possession—Specific performance suit for—Maintainability of suit—Rule of Evidence

EXPECTANCIES—conclld.

Law—Rule in India before Transfer of Property Act—Doctrine of feeding the estoppel, meaning of. Contracts for sale of expectancies are void in India under the provisions of a 6 of the Transfer of Property Act and a 23 of the Indian Contract Act, and a suit for the specific performance of such a contract, instituted after the expectancy fell into possession is not maintainable. The statute-law of India forbids transfers of expectancies, and it would be futile to forbid such transfers, if contracts to transfer them are to be enforced as soon as the estate falls into possession. In England and in India before the Transfer of Property Act, a mere chance of succeeding to an estate was a bare possibility incapable of assignment, but in England it is settled law that in the case of such expectancies, equity will enforce a contract to convey the estate when it fell in, and a similar rule has been applied in India in cases which were not governed by the Transfer of Property Act. Courts are bound to give effect to the plain provisions of the statute law, instead of following a course of English decisions which are based on a course of long established practice rather than on principle. 'Equitable doctrine of feeding the estoppel' explained. *Raja Sahib Pralad Sen v Baboo Sundar Singh*, 2 D L R 111, 117, *Oodry Koorur v Musummat Iadoo*, 13 Moo I 1 555, *Ran Arunjun Singh v Prayag Singh*, 1 L R 3 Calc 133, *Gitabai v Balaji Keshari*, 1 L R 17 Bom 222, *Sumsuddin v Abdul Husain*, 1 L R 31 Bom 165, *Dhoojeth Subayya v Dhoojeth Venkayya*, 1 L R 39 Mad 201, and *Sham Sundar Lal v Aechan Kunwar*, 1 L R 21 All 71, referred to by JAGANNADA RAJU : SRI RAJA PRASADA RAO (1915) . I. L. R. 39 Mad. 554

F**FACT.**

— questions of—

See AIRFAL . I. L. R. 43 Calc. 833

FALSE INFORMATION.

See FALSE INFORMATION TO POLICE.

Information to the police reported false—Subsequent petition to the Magistrate impugning the report and praying for trial—Complaint—Proper procedure—Reference of complaint to another Magistrate for inquiry and report, legality of—Power of latter to hold inquiry and direct prosecution of informant for offences under ss 182 and 211 of the Penal Code—Jurisdiction of referring Magistrate to try such charges on the police report without previous disposal of the complaint—Discretion—Procedural Criminal Procedure Code (Act V of 1908) ss 182, 183 to 203, 476, 537. A petition impugning the police report, and praying that the accused be placed on trial as a "complaint" under the Criminal Procedure Code. When such a petition is

FALSE INFORMATION—conclld

presented to a Sub-divisional Magistrate he should, therefore, either examine the complainant himself, record reasons for distrusting its truth, hold an inquiry personally, and then pass a formal order of dismissal, or he should make it over to another Magistrate for disposal. The latter may then, after inquiry, make a proper order dismissing the complaint and pass an order under s 476 of the Code. The Code does not permit a Magistrate to refer a complaint to another Magistrate for inquiry and report, and the latter has no jurisdiction in such a case to pass an order under s 476. Where in such a case the police have reported the information as false, and have asked for a prosecution, the Magistrate has jurisdiction to try the charge on the police report. *Queen Empress v Sham Lal*, 1 L R 14 Calc 797, referred to. There is no statutory provision requiring such petition to be finally disposed of as a complaint before a prosecution under a 211 of the Penal Code commences. It is a matter of discretion, and the High Court will not, having regard to s 537 of the Code, interfere with a conviction if the accused has not been prejudiced. *GANGADHAR PRADHAN v ENNERON* (1915) . I. L. R. 43 Calc. 173

FALSE INFORMATION TO POLICE.

See SANCTION FOR PROSECUTION.

I. L. R. 43 Calc. 1152

FAMILY ARRANGEMENT.

See HINDU LAW—ADOPTION

I. L. R. 40 Bom. 668

FAMILY RECORD.

See EVIDENCE . I. L. R. 43 I. A. 256

FAMILY SETTLEMENT.

See REGISTRATION ACT (XVI OF 1908), ss 17, 49 . I. L. R. 38 All. 366

Claim to property to which the claimant must have known he had no title—Relinquishment to save litigation—Such relinquishment not binding on reversioners. One D R upon the death of his wife, had claim to certain property which had been the property of the wife's father and had been given to the wife by her mother. The mother and the surviving sister of the wife, in order to avoid litigation, relinquished a substantial portion of the property to D R Bidi, on a suit by the reversioners entitled to succeed to the property upon the death of the survivor of the two ladies, that relinquishment made by them could not properly be called a family settlement and was not binding against the reversioners who were entitled to the time when the so called family settlement was made. *Bihari Lal v David Hussain*, 24 All 240, and *Hiran Bibi v Saker*, 24 C W 329, referred to. *HINDU LAW* . DRASEFAT RAI (1916) . I. L. R. 38 All. 366

FATHER'S ESTATE

possession of, daughter's suit for—
 See CIVIL PROCEDURE CODE (ACT X OF 1908), s. 2, CL. (11), O. XXII, R. 1.
 I. L. R. 39 Mad. 382

FATHER'S HEIRS

right of, to continue suit—
 See CIVIL PROCEDURE (ACT V OF 1908), s. 2, CL. (11), O. XXII, R. 1.
 I. L. R. 39 Mad. 382

FEMALE HEIRS.

See HINDU LAW—STRIDHAN.
 I. L. R. 43 Calc. 64

FERRY.

See SPECIAL CONSTABLES.
 I. L. R. 43 Calc. 277

FINAL DECREE

expenses incurred in the—
 See TRUSTEES OF A TEMPLE.
 I. L. R. 39 Mad. 456

FINDING OF FACT.

See SECOND APPEAL.
 I. L. R. 38 All. 122

FIRST-CLASS MAGISTRATE.

See PERJURY . I. L. R. 43 Calc. 542

FITNESS OF SURETY.

See SURETY . I. L. R. 43 Calc. 1024

FORCE MAJEURE.

See CONTRACT ACT (IX OF 1872), s. 56.
 I. L. R. 40 Bom. 301

FOREIGN COURT.

1. ———— Appearance by the defendant—Protest against jurisdiction—Defence on the merits—To get refund from the creditor's son to whom the suit debt was repaid and to avoid arrest—Voluntary submission to jurisdiction. The defendant who was sued in a foreign Court, viz., a Court in the Cochin State, appeared and defended the suit against him on the merits but protested against the jurisdiction of the Court. His reasons for appearing and defending the suit were: (i) that the creditor's son to whom he had repaid the suit debt refused to refund the money unless he defended the suit brought by the father and (ii) that if a decree were passed against him, he might be arrested when he went to Cochin on business or to see his relations. Held, that the defendant must be deemed to have submitted to the jurisdiction of the foreign Court voluntarily notwithstanding his protest against its jurisdiction. *Parry & Co. v. Appasami Pillai*, I. L. R. 2 Mad. 407, overruled. *RAMA v. KRISHNA* (1915) . I. L. R. 39 Mad. 733

2. ———— Suit in, on cause of action tried and determined between the parties

FOREIGN COURT—concl'd.

in a British Indian Court—Latter Court, if may issue perpetual injunction to restrain proceeding in Foreign Court—*Res judicata*—Civil Procedure Code (Act V of 1908), ss. 11, 13—Specific Relief Act (I of 1877), s. 56(B). A A, a Mahomedan, died leaving estates situate partly within British India and partly within the ceded district of the Feudatory State of Rampur, and leaving him surviving a widow, a daughter and her children. The daughter and her children alleging that A A was a Shia and that therefore the daughter excluded the residuary heirs from inheritance instituted a suit against the latter in a British Indian Court (viz., the Court of the Subordinate Judge at Bareilly), where their claim was opposed by the residuaries, and finally obtained an *ex parte* decree upholding their claim, the defendants having failed to obtain an adjournment which they said was necessary to enable them to call witnesses. This decree was affirmed by the High Court at Allahabad. Meanwhile the residuaries instituted against the daughter and her children a suit in a Court of the Rampur State for possession of a moiety of the estate of A A situate in the ceded district of Rampur State claiming, as they had done in their defence in the other suit, that A A was a Sunni. The daughter and her children thereupon instituted another suit in the Court of the Subordinate Judge at Bareilly praying for a declaration that the previous decree of the Court was binding between the parties and operated as *res judicata* and that the defendants (the residuaries) be restrained by a perpetual injunction from continuing their suit in the Court of the Rampur State. The Subordinate Judge as well as the High Court at Allahabad on appeal having held that they had no jurisdiction to grant the injunction and dismissed the suit, the Privy Council on the appeal of the plaintiff's affirmed that decision and dismissed their appeal. *Maqbul Fatima v. Amir Hasan Khan*, I. L. R. 37 All. 1, affirmed. *MAQBUL FATIMA v. AMIR HASAN KHAN* (1916) . 20 C. W. N. 1213

FOREIGN DECREE.

See DECREE . I. L. R. 40 Bom. 504

1. ———— Execution by British Court—The British Court can inquire if the decree was passed with jurisdiction—*Ex parte* decree—Absent defendant not submitting to jurisdiction—Decree, a nullity—Civil Procedure Code (Act V of 1908), st. 44, Order XXI, rule 7—Act XIV of 1882, s. 229 B. It is open to a British Court executing a foreign decree to enquire whether the foreign Court had jurisdiction to pass the decree. A decree pronounced by a Court of a foreign state in a personal action *in absentem*, the absent party not having submitted himself to its authority, is a nullity. *JIVAPPA TIMMAAPPA v. JEERGI MURGEAPPA* (1916).

I. L. R. 40 Bom. 551

2. ———— Execution of foreign decree in British India—Competency of

FOREIGN DECREE—concl'd.

British Indian Courts to question the jurisdiction—Appearance to save property from seizure—Denial of jurisdiction and claim—Jurisdiction, submission to, whether voluntary It is competent to the executing Court to refuse execution of a foreign decree sought to be executed in British India under s 44 of the Code of Civil Procedure on the ground that such decree was passed without jurisdiction. Submission is not voluntary if the appearance is made only to save property which is in the hands of a foreign tribunal. *Vincent v Barrett*, 55 L J (Q B D) 39, *Guind v De Clermont and Donner*, 30 T L R 511, and *Bossière & Co v Broecker & Co*, 6 T L R 85, followed. *Perry & Co v Appasami Pillai* 1 L R 3 Mad 407, doubted. *Per WALLIS, Offr O J*—Whether submission was for the purpose of saving property or voluntary is a question of fact in each case. *Per Seshagami Aiyar, J*—The change in the language between s 223 of the Civil Procedure Code (Act XVI of 1892) and O XXI, r 7, of the Code of 1908 does not warrant the conclusion that in regard

by the Courts in British India, relate only to the mode of execution and have not the effect of giving foreign judgments all the incidents of a judgment of a British Court. *VEERABAGHAVAT AYYAR v MROA SAIR* (1914)

L. L. R. 39 Mad. 24

FOREIGN JUDGMENT.

Defence struck out—No decision on the merits—No cause of action Where in a suit in a foreign Court, defence was struck out and judgment entered for plaintiff *Held*, that the judgment is not one decided on the merits and thus not being conclusive could not of itself constitute a cause of action to the suit. *Viswanadha Reddi v Keymer* (1914)

L. L. R. 39 Mad. 85

FOREST ACT (VII OF 1878).

See CONTRACT ACT (IX OF 1872), s 23
L. L. R. 40 Bom. 84

FORFEITURE.

See RIGHT OF SUE
L. L. R. 40 Bom. 200

See TENANTS IN COMMON
L. L. R. 38 Mad. 1049

—relief against—
See LANDLORD AND TENANT
L. L. R. 38 Mad. 834

See TENANTS IN COMMON
L. L. R. 39 Mad. 1049

FORGED DOCUMENT

—copy of—
See FORGERY L. L. R. 43 Calc. 783

FORGERY.

See LIMITATION ACT (IX OF 1908), Sch I, Arts 92, 93

L. L. R. 40 Bom. 22

See PENAL CODE (ACT XLV OF 1860), ss 30, 467

L. L. R. 39 All. 439

1. ————— *Certified copy, filing of, whether user of forged document, if original be forged—Evidence of intention—Penal Code (Act XLV of 1860), ss 468, 471* A series of similar transactions which are not the offence charged can only be used as evidence of the intention of the person who forged the document and not as evidence of forgery. It is extremely doubtful whether the mere filing of a copy is the user of a forged document. A certified copy thereof is certainly not a forged document. But it is otherwise where the offender used the copy knowing or having reason to believe that the entries in the original documents were forgeries and intending to use them for fraudulent purposes. *Queen v Nujum Ali*, 6 W R Cr 41, and *Emperor v Mulai Singh*, 1 L R 28 All 402, distinguished. *Krishna Govinda Pal v Emperor* (1915)

L. L. R. 43 Calc. 733

2. ————— *Signing certificate of purchase of arms and ammunitions in false names and giving wrong addresses—Person legally entitled to possess the same—Act "fraudulent" if not "dishonest"—Penal Code (Act XLV, 1860), ss 23, 24, 463 to 465* A person lawfully entitled to possess arms and ammunitions signing the prescribed certificate of purchase of the same in the name of another with an address not his own, and thereby deceiving the gunsmith and the Government and defeating the object of the certificate, commits forgery his act having been done "fraudulently," if not "dishonestly." *Reg v Toshack*, 1 Den C C R 492, *Emperor v Dhunum Kater*, 1 L R 9 Calc. 53, and *Queen Emperor v Abbas Ali*, 1 L R 25 Calc. 512, followed. *Carsley v Emperor* (1915)

L. L. R. 43 Calc. 421

FORWARD CONTRACT.

See CONTRACT ACT (IX OF 1872), s. 47.
L. L. R. 40 Bom. 517

FOUNDER.

—descendant of—
See WARR L. L. R. 43 Calc. 487

—intention of—
See INTENTION OF FOUNDER.

FRAUD.

See FORGERY L. L. R. 43 Calc. 421

See MISTAKE L. L. R. 43 Calc. 217

See SUIT TO SET ASIDE A DECREE.
L. L. R. 39 All. 7

—by guardian—
See MINOR L. L. R. 33 All. 452

1. ————— *Fraud different from that charged in plaint, if can be relied on—Duty*

FRAUD—contd.

of plaintiff to state facts constituting alleged fraud—Document bearing genuine signature—Burden on signatory to prove falsity of recitals. When a plaintiff impeaches a transaction on the ground of fraud the facts which constitute the alleged fraud must be distinctly, specifically and accurately stated. That a charge of fraud must be substantially proved or laid and when one kind of fraud is charged, another kind of fraud cannot, upon failure of proof, be substituted for it. That the rule that the Court will grant only such relief as the plaintiff is entitled to upon the case made by his pleadings is strictly enforced when the plaintiff relies on fraud. That when a party seeks to avoid the Statute of Limitation on the ground of fraud the statement of claim should set forth specifically the particular acts which constitute the fraud as well as the time when it was discovered in order to enable the defendant to meet the fraud and the alleged time of its discovery so that the Court may see whether by the exercise of ordinary diligence the discovery might not have been made before. *BANSIRAM v. PANCHAMI DAS* (1914).

20 C. W. N. 638

2. ———— *Fraud ex parte decree and sale thereunder—Suit to set aside decree and sale on the ground that processes in suit and execution suppressed in collusion with officers of Court—Suit if maintainable—Case of fraud, pleading and proof in.* Where the plaintiff in a suit to set aside an *ex parte* rent decree and sale held thereunder alleged that the defendants had in collusion with the officers of the Court, caused a suppression of the processes in the suit as also in the execution proceedings: *Held*, that if this allegation had been established, the plaintiff would have been entitled to succeed. The mere circumstance that a defendant had failed to have an *ex parte* decree set aside under s. 108, C. P. C. (of 1882) or to have a sale set aside on the ground of material irregularity does not debar him from seeking relief in a suit properly framed for the purpose on the ground that the suit itself was a fraudulent suit and that the proceedings therein were vitiated by fraud. But to enable the plaintiff to succeed in a suit so framed, he must specifically allege the circumstances of fraud and he must prove the fraud as laid in the plaint. Fraud how to be pleaded and in what manner established discussed. *NAGENDRA NATH BOSE v. PARBATI CHARAN* (1914). 10 C. W. N. 819

3. ———— *Suit to set aside ex parte decree on ground of fraud if lies, when application to set aside refused.* A suit by the defendant to set aside an *ex parte* decree as fraudulent does not lie after an infructuous application to set it aside under s. 108 of the Civil Procedure Code of 1882, if the fraud in respect of which the decree is sought to be set aside was properly in issue in the application under s. 108 and was determined upon such application. *Radha Raman Saha v. Pran Nath Roy*, I. L. R. 28 Calc. 475 : s. c. 5 C. W. N. 756, *Khagendra Nath Mahata*

FRAUD—concl.

v. Pran Nath Roy, I. L. R. 29 Calc. 395 : s. c. 6 C. W. N. 473, *Bal Kishan Lal v. Topeswar Singh*, 15 C. L. J. 446, 448, *Gulab Koer v. Badshah Bahadur*, 10 C. L. J. 428, *Puran Chand v. Sheodat Rai*, I. L. R. 29 All. 212, and *Naidar Mal v. Ranuak Husain*, I. L. R. 29 All. 608, referred to. *KHIRODE CHANDRA ROY v. SRIMATI ASHTULLABU* (1916). 20 C. W. N. 845

FRAUDULENT EXECUTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2.

I. L. R. 40 Bom. 333

FRAUDULENT PREFERENCE.

————— *State of mind of maker—Intention—Receiver—Onus—Provincial Insolvency Act (III of 1907), s. 37.* The question whether there has been a fraudulent preference depends not upon the mere fact that there had been a preference but also on the state of mind of the person who made it. It must be shown not only that he has preferred a creditor but that he has fraudulently done so. It depends upon what was in his mind. For this purpose, it is not true that the debtor must be taken to have intended the natural consequences of his acts. One must find out what he really did intend. *Dicta* of Lord Halsbury in *Sharp v. Jackson*, [1899] A. C. 419, followed. It is not necessary to threaten criminal proceedings to constitute pressure. The threat of civil suits is enough. If it is established that the transaction was the result of real pressure brought to bear by a creditor on his debtor, it cannot be deemed as a spontaneous act. The onus is on the Receiver to show that it was an outcome of a fraudulent preference. *NRIPENDRA NATH SAHU v. ASHUTOSH GHOSE* (1915). I. L. R. 43 Calc. 640

FRAUDULENT REPRESENTATION.

See CONTRACT ACT (IX OF 1872), ss. 20, 65. I. L. R. 40 Bom. 638

FRAUDULENT SUPPRESSION.

See SUBROGATION I. L. R. 43 Calc. 69

FREIGHT.

————— paid in advance—

See CONTRACT ACT (IX OF 1872), ss. 56, 65. I. L. R. 40 Bom. 529

FULL BENCH.

————— *When a reference should be made to full bench.* Advantage of referring matters, upon which a difference of opinion has arisen in the High Court, to a Full Bench adverted to. *BUDDHA SINGH v. LALTU SINGH* (1915).

20 C. W. N. 1

G

GAMBLING.

See BOMBAY PREVENTION OF GAMBLING
ACT (BOM. IV OF 1887), s. 3
I. L. R. 40 Bom. 263

GARNISHEE

— deposit by—

See DEPOSIT IN COURT.
I. L. R. 43 Calc. 269

GENERAL REPEALING ACT (XII OF 1873).

See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 115 I. L. R. 40 Bom. 86

GIFT.

See MAHOMEDAN LAW—GIFT
I. L. R. 38 All. 627

See TRANSFER OF PROPERTY ACT (IV OF
1882), ss. 123, 129
I. L. R. 38 All. 212

— of land, by coparcener—

See HINDU LAW—PARTITION
I. L. R. 39 Mad. 587

— to illegitimate son—

See HINDU LAW—GIFT
I. L. R. 39 Mad. 1029

— to wife and children or children
alone—

See MALABAR LAW
I. L. R. 39 Mad. 317

GODOWNS.

See LAND ACQUISITION
I. L. R. 43 Calc. 665

GOODS.

— non-delivery of—

See SPECIFIC MOVABLE PROPERTY
I. L. R. 39 Mad. 1

GOVERNMENT.

— right of—

See ASSESSMENT I. L. R. 43 Calc. 873

— suit against—

See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 80 I. L. R. 40 Bom. 392

GOVERNMENT LANDS.

See MADRAS ESTATES LAND ACT (I OF
1904), ss. 6, 8, 8A (G). 8.
I. L. R. 39 Mad. 944

GOVERNMENT OF INDIA ACT, 1915.

— ss. 106, 107—

See PRESS ACT (I OF 1910), s. 3 (F).
PROVIDO. I. L. R. 39 Mad. 1164

GOVERNMENT ORDER.

See SECRETARY OF STATE FOR INDIA
I. L. R. 39 Mad. 781

GOVERNMENT PROCLAMATIONS.

See SALE OF GOODS.

I. L. R. 40 Bom. 11

GOVERNMENT SALE.

See WASTE LANDS.

I. L. R. 43 I. A. 303

GOVERNMENT SERVANTS' CONDUCT RULES,
1904.

See HINDU LAW—DEBT

I. L. R. 40 Bom. 126

GOVERNMENT SOLICITOR.

See COSTS. I. L. R. 40 Bom. 559

GRACE, DAYS OF.

— for payment of rent—

See LANDLORD AND TENANT

I. L. R. 39 Mad. 834

GRAMOPADHYA.

See VATANDAR JOMI

I. L. R. 40 Bom. 112

GRANT.

1. — Grant by the Maharaja of Chota Nagpur—Custom of primogeniture—Impartibility of the estate—Proof of custom, onus of—Lex loci custom of Chota Nagpur—Meaning of *putra pautrad*. Certain grants of jagirs by the Maharaja of Chota Nagpur to a person related to him or to his descendants dating from 1763 to 1786 were in terms to the grantee and his sons and grandsons (*putra pautrad*). The family of the grantee had for several generations interpreted the words "*putra pautrad*" in the literal sense, namely, to mean, son and son's son. Held, that at the time of these grants the words had not acquired in Chota Nagpur the technical meaning which according to the Privy Council in *Lalit Mohan v. Chullian Lal*, I. L. R. 21 I. A. 76 & C. I. C. W. A. 357, they came to have by 1863 when used in Wills executed in Bengal, and the grants in this case did not convey an absolute estate unconditioned and unlimited. *Per ATKINSON, J.*—That although as held by the Privy Council the words convey an absolute estate in lands descendable from generation to generation coupled with full power of alienation, these words of limitation may be controlled by custom limiting their scope and operation. *Per Kash Lal v. Ramaswar Nath Singh*, I. L. R. 31 Calc. 561, 562, relied on. Up to 1862, the lands granted descended regularly according to the rule of primogeniture to the eldest lineal descendant of the eldest son, when the last male descendant of that line dying leaving a widow, the Maharaja proceeded to resume the property whilst two brothers, the descendants of a younger son, claimed to succeed to the property. The disputes terminated in two deeds, one executed by the brothers agreeing that the widow should hold possession of the property as long as she lived upon payment of rent to the Maharaja and that they should take possession after her death, and the other by the Maharaja purporting on receipt of con-

GRANT—contd.

to be taken to relate the lands to the brothers as coparceners. *Held*, that as there was no disavowal of heir in the line of the grantee, the Maharaja had no right to resume and the *sanad* to the brothers was a nullity. *PER CHAIRMAN J.*—That as the younger of the brothers had the right to succeed on the death of the elder without a *will* or his concurrence to the deed in favour of the widow might have been taken to avoid future trouble. *PER ATKINSON J.*—That the agreement was ineffective to alter or vary the impartible character of the property or to change its method of devolution. *PER ATKINSON J.*—The custom of primogeniture which prevails in Chota Nagpur in the case of grants made by the Maharaja, whereby the property so granted is deemed impartible and descends to the eldest male heir by lineal descent applies with greater force in the case of grants of property made between the Maharaja and his relations. *Kopilrauth v. Government*, 22 W. R. 17, referred to. Where a custom prevails in one branch of a family it is strong evidence to be relied on that it applies with equal force to another branch of the same family. *Gururajhuja Prasad v. Superurdhuja Prasad*, I. L. R. 33 All. 37; 5 C. W. N. 33; relied on. The custom is recognised, not only as a family custom prevailing in the Maharaja's family, but also as the *lex loci* custom of Chota Nagpur. *Gajendra Nath Sani Deo v. Mathura Nath Sani Deo* (1916) . 20 C. W. N. 876

2. *Presumption of lost grant, in absence of proof of legal title, on the basis of user exercised and enjoyed.* Where a Court is asked to presume a grant in favour of a party in the nature of a lost grant, i.e., a lawful origin of a long and continuous user and enjoyment of property in the absence of legal proof of title, it should presume a grant on the basis of the user exercised and enjoyed by that party. *Nawagarh Coal Company, Ltd. v. Beharilal Trigunait* (1916) . 20 C. W. N. 1135

GRAVEL.

stocking of, on a military road—

See TORT . I. L. R. 39 Mad. 351

GREAT-GRANDFATHER'S SON'S DAUGHTER'S SON—

See HINDU LAW—SUCCESSION.

GRIEVOUS HURT.

See PENAL CODE (ACT XLV OF 1860)
ss. 100, 325 I. L. R. 40 Bom. 105

GUARDIAN.

See GUARDIANS AND WARDS ACT (VIII OF 1890), s. 7 I. L. R. 40 Bom. 513

See MINOR . I. L. R. 38 All. 452

GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXII, R. 7.
I. L. R. 39 Mad. 853

GUARDIAN AD LITEM—concl'd.

Joint Hindu family—Suit on mortgage against father and sons—Irregular appointment of father as guardian of minor sons—Ex parte decree—Suit by sons to recover their shares. In a suit for sale on a mortgage executed by the father of a joint family governed by the *Mitakshara* the plaintiffs impleaded as defendants the father and his three sons, two of whom were minors. The plaintiffs named the father as guardian *ad litem* of the minors, but no steps were taken, as required by the rules of the High Court, to ascertain whether the father was willing to act as guardian. The father did not appear, and an *ex parte* decree was passed, in execution whereof the family property was sold. Subsequently, on attaining majority, the minor sons brought a suit for possession of their shares; alleged that the original debt was an immoral debt which they were not bound to discharge, and also they had not been legally represented in the previous suit. The Court of first instance having dismissed the suit without going into the merits, the lower Appellate Court made an order of remand. *Held*, that there had been a serious irregularity, if nothing worse in the appointment of the father as guardian *ad litem*, and as it was impossible to tell, without knowing to what extent the plaintiffs were in a position to establish their case regarding the immorality of the debt, how far the appointment of their father as guardian had prejudiced them, the order of remand was right. *BAJUNATH RAI v. DHARAJI DEO TIWARI* (1916) . I. L. R. 38 All. 315

GUARDIAN AND MINOR.

See ARBITRATION.

I. L. R. 43 Calc. 290

See MORTGAGE . I. L. R. 38 All. 92

Contract—Specific performance—Specific performance of a contract not favourable to minor refused. The District Judge sanctioned the sale by the certificate guardian of a minor of a house belonging to the minor for a price of Rs. 1,300. There arose, however, some dispute about the drafting of the deed of sale and the purchase was not carried through. Meanwhile other offers were made for the property, and ultimately the District Judge directed that the house should be sold to one Abdullah for Rs. 2,000. *Held*, on suit brought by the person in whose favour the sale had originally been sanctioned, that the Court was in the circumstances justified in refusing to grant a decree for specific performance. *Chhitar Mal v. Jagan Nath Prasad*, I. L. R. 29 All. 213, referred to. *IMAMI v. MUSAMMAT KALLO* (1916).

I. L. R. 38 All. 433

GUARDIANS AND WARDS ACT (VIII OF 1890).

ss. 2, 12, 21, 24 and 25—*Mahomedan Law—Shafi, school of—Guardianship of minor son—Indian Majority Act (IX of 1875)—Habeas Corpus*

GUARDIANS AND WARDS ACT (VIII OF 1890)—*contd*

s. 2—*concl'd*

nature of A father can apply under s 25 of the Guardians and Wards Act (VIII of 1890) for the custody of his minor son though the minor had all along been in the custody of his grand mother but never in the custody of his father. *Per SADASIVA AYYAR J*—The word "custody" in all the three places where that word occurs in s 25 (1) includes both actual and constructive custody of a minor. Under Mahomedan law a minor continues to remain in the custody of his guardian till he attains the age of 18 notwithstanding (that under) the Shafi School to which he is subject, his personal emancipation would have taken place when he attained the age of 15 or when he attained puberty between the ages of 9 and 15. The word "guardian" in s 21 includes the guardianship both of persons and property. *Prade v Krishna I L R 3 Mad 391*, followed. *Per NAPIEN J*—The object of ss 24 and 25 is to declare the right of the guardian of the person of a minor to the continuous custody of his person and to provide a machinery for enforcing it. The writ of *Habeas Corpus* proceeds on the fact of an illegal restraint and can have no application to cases where there is no question of restraint. *IBRAHIM NACHI v IBRAHIM SAMID (1915) I L R 39 Mad 608*

s. 7—*Application for guardianship of property*—*Resistance to the guardianship order on the ground that the property was joint family property*—*Elaborate inquiries as to the character of the property not compendious*—*Summary nature of the inquiry* In an application for guardianship of a minor's property under s 7 of the Guardians and Wards Act (VIII of 1890) the applicant alleged that the property was the separate property of the minor's husband. The opponents resisted the application contending that the property was joint family property which had survived to them. The Court conducted a lengthy inquiry into the character of the property and

the claim, that the minor was separately entitled to separate property the Court ought to appoint a guardian of the property of the minor and leave it to him to institute suits for the recovery of the property. S 7 of the Guardians and Wards Act (VIII of 1890) contemplates only a summary enquiry followed by an order made for the welfare of the minor. *GUPTA SHIVGAL AFFA v TAYAWA SHIDDAPPA (1910)*

I L R. 40 Bom. 513

ss. 12, 13, 17, 19, 24 and 25—*Minor never in the custody of his father*—*Application by father for custody of his son under Guardians and Wards Act*—*Issue of the District Court to make an order on the application*—*Findings by way of suit*—*Jurisdiction of District Court*—*One C, the maternal uncle of B, a minor, applied to the District*

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concl'd*

s. 12—*concl'd*

Court at Ahmedabad for the appointment of himself as guardian of the person and property of the minor in preference to A, the father of the minor. The Court made no order as to the guardianship of the minor's person by reason of s 19 of the Guardians and Wards Act, 1890, but appointed the Deputy Nazir as the guardian of the minor's property. Subsequently the father who never had the custody of his minor son, applied under the Guardians and Wards Act 1890 for the custody of the boy. The Joint Judge refused to make an order on the application and referred the father to a regular suit. On appeal to the High Court. *Held* that the only remedy of the father was to file a suit for the custody of his son. *Sharif v Munkhan I L R 25 Bom 574*, followed. *Held* further that the jurisdiction of the District Court was defined by the Guardians and Wards Act and that it had no inherent power to make orders with reference to minors which were not expressly conferred upon it by that Act. *Annie Desant v Narayanas I L R 35 Mad 507* followed. *ACHARYAL JALISANDAS v CHITMAN LAL PAREKH (1916) I L R 40 Bom. 690*

ss 17 and 19—*Guardianship of minor children*—*Father, marrying a second time, no disability* Under s. 19 of the Guardians and Wards Act, the Court must be satisfied that the husband or father is unfit to be the guardian of his wife or child respectively before it can appoint another person as guardian. The fact of the father marrying a second time is no ground for depriving him of the guardianship of his minor children. *Bindo v Sham Lal I L R 22 All 210* disapproved. *AUDIAFFA v ALLENDRAVI (1915)*

I L R. 39 Mad. 473

ss 34 (d), 45 (b)—*Guardian failing to pay full amount of purchase money of property sold with permission because purchaser retained a portion in discharge of old debt*—*Daily fine, order to pay if legal* Where a certificated guardian of minors obtained permission to sell a portion of their estate on the representation that the money (about Rs 3000) was wanted to repair their house and submitted accounts showing that out of Rs. 5000 obtained by the sale Rs. 4000 had been retained by the purchaser in payment of a sum of Rs. 4000 which the guardian had borrowed from her to give the minors in marriage and the Judge thereupon called upon the guardian to pay the said amount of Rs. 4000 in Court within a specified time and directed that on failure to do so the guardian was to pay a fine of Rs. 5 per day. *Held*, that the amount the guardian was called upon to pay was not an amount of balance due from the guardian as the same had not been paid to her nor was it a balance due on account of a debt in compliance with a requisition under cl. (f) of s. 34 of the Guardians and Wards Act, and the order imposing a daily fine was also void. *NEHRAN KESHA BHAU, Pt (1914)*

20 C. W. N. 683

GUARDIANSHIP.

See HINDU LAW—GUARDIANSHIPS.

— of minor children—

See GUARDIANS AND WARDS ACT (VIII OF 1890), ss. 17, 19.

I. L. R. 39 Mad. 473

H**HABEAS CORPUS.**

— nature of—

See GUARDIANS AND WARDS ACT (VIII OF 1890), s. 2.

I. L. R. 39 Mad. 608

HEARSAY EVIDENCE.

See EVIDENCE ACT (I OF 1872), s. 33.

I. L. R. 39 Mad. 449

HEIR.

— to self acquired property of woman—

See ALIYASANTANA LAW.

I. L. R. 39 Mad. 12

HIGH COURT.

— extraordinary civil jurisdiction of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 . I. L. R. 40 Bom. 86

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See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 . I. L. R. 40 Bom. 509

HIGH COURT CRIMINAL SESSIONS.

See PERJURY . I. L. R. 43 Calc. 542

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See VAKALATNAMA.

I. L. R. 43 Calc. 884

HIGH COURT, JURISDICTION OF.

See DIVORCE ACT (IV OF 1869), ss. 3, 16, 37, 44. . I. L. R. 40 Bom. 109

See PERJURY . I. L. R. 43 Calc. 542

See PRESS ACT (I OF 1910), ss. 3 (1), 4 (1), 17, 19, 20 AND 22.

I. L. R. 39 Mad. 1164

HIGH COURTS ACT (24 & 25 VIC. c. 104).

s. 9—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 . I. L. R. 40 Bom. 86

HINDU CONVERTS.

— to Mahomedanism—

See SUCCESSION . L. R. 43 I. A. 35

HINDU FAMILY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 88.

I. L. R. 39 Mad. 831

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HINDU LAW—ADOPTION.

1. — Adoption by junior widow without consulting senior widow but with sapindas consent, invalidity of—Preferential right of senior widow to adopt. An adoption made by a junior widow of a deceased Hindu purporting to be made with the consent of the sapindas, but without consulting the senior widow is invalid. *Kakerla Chukkamma v. Kakerla Punnamma*, 28 Mad. L. J. 72, followed. *Vellanki Venkata Krishna Rao v. Venkatarama Lakshmi*, I. L. R. 1 Mad. 174, referred to. *Per WALLIS C. J.*—In the absence of an express authority by the husband to any one of the widows, the senior widow has the preferential right to adopt with the consent of the sapindas. The senior widow is one of the kinsmen whom it is the duty of the junior widow to consult within the meaning of the rule enunciated in *The Rampad Case*, 12 Moo. I. A. 397. *RAJAH VENKATAPPA NAYANIM BAHADUR v. RENGARAO* (1915) I. L. R. 39 Mad. 772

2. — Adoption—Consent of sapindas—Refusal of consent by nearest sapinda on personal grounds, improper—Consent of remoter sapindas—Adoption, validity of. Where the nearest sapinda refused to give his consent to an adoption by a widow on the ground that he would forfeit the right to property which he

HINDU LAW—ADOPTION—contd.

would otherwise get, and the widow made the adoption with the consent of remoter sapinda. *Held*, that the refusal of the nearest sapinda was based on improper grounds and that the adoption with the consent of the remoter sapinda was valid. **VENKATARAMA RAJU v. PARAMHA** (1914).

I. L. R. 39 Mad. 77

3. ——— *Adoption—Discontinuation of estate on adoption—Property of the natural father vested exclusively in the son before adoption—After adoption the property remains in the natural family.* Under Hindu Law, when a boy is given in adoption, he loses all the rights he may have acquired to the property of his natural father including the right to property which has become exclusively vested in him before the date of his adoption. **Raja Venkata Narayana Appa Row v. Sri Rajah Rangayya Appa Row**, I L R 39 Mad 437, dissented from. **DATTATRAYA SARMA RAM v. GOVIND SAMBHAJI** (1916).

I. L. R. 40 Bom. 429

4. ——— *Adoption—Hill in favour of a grand daughter—Simultaneous execution of adoption deed as well as will—Construction of documents—Adopted son's consent, binding effect of—Disposition good as a family arrangement.* One B died leaving him surviving his widow L and a predeceased son's daughter K (plaintiff). B before his death, recommended L to adopt A his brother's son. L made the adoption by a deed dated the 10th June 1893, and simultaneously executed a will in favour of B. On the strength of this will B claimed the property in suit. The Subordinate Judge decreed in a suit holding that the will being made with the full consent and concurrence of A who was then major must take effect. On appeal the decree was reversed. On appeal to the High Court. *Held*, (i) that the adoption deed and the will must be read together, and that, so read, they constituted a single family arrangement (ii) that the adopted son who was of full age having deliberately accepted the family arrangement and its advantages must be held to be *frivolously misled* v. *Sriraman*, I L R 27 Mad 577 referred to (iii) that the disposition in favour of plaintiff was good not because it was a bequest made by L, but because it was a part of the single family arrangement which all parties accepted. **KACHIBAI v. PATIL** (1916). I. L. R. 40 Bom. 688

5. ——— *Adoption by Brahmins—Dattahoma ceremony not performed—Adoption of valid—Idem per and idem per. Held*, in a review of authorities, that the dattahoma ceremony is not essential when the adopted boy is of the same gotra as the adopter, even when not the twice born class. **RETI v. LAKSHMI PRASAD** (1914). 20 C. W. N. 19

6. ——— *Authority to adopt—Adoption given, before death—Proficiency of will, which contained no directions for adoption, made two weeks before death, in estimating probabilities—Probable change of intentions—Husband,*

HINDU LAW—ADOPTION—contd.

testimony of, opinion of Trial Judge, value of discrepancy in witnesses' statements, consideration of—Non citation by either side of witness who went over from one side to the other—Case raised in first Court, not urged in appeal, if should be allowed to be raised on further appeal. It, a Hindu mahajan of means, died on 11th February 1896, leaving him surviving a widow and a daughter. He had been suffering from phthisis for some time. Two months before his death he executed a will, by which he made a very modest provision for his daughter, and gave his wife a life interest in the bulk of his properties (which, however, she was liable to forfeit if she behaved contrary to the injunctions of the will). The testator had been hopeful that a son might be born to him, and the son, if born, was, under the will, to be the sole executor, donee and owner. The will contained no power to adopt a son. Seven years after the death of B, his widow adopted an infant son of B's nephew J, born after B's death. By his will B had expressly excluded J, on account of his profligacy and irreligion, from participation in his funeral ceremonies, preferring for that purpose his sister's son B, in whom he had confidence and who lived in the same house with him and whom he appointed one of his executors. The authority for the adoption was alleged to have been given by B, shortly before his death (which he appeared to have become aware of the serious nature of his illness) verbally to his wife, in the presence of several respectable witnesses, most of whom deposed that B had expressly directed a son of J (should one be born) to be taken in adoption. The Trial Judge had held the alleged authority to adopt to have been proved. But the High Court on appeal reversed that finding relying chiefly upon the contrary inferences regarding probabilities arising from the language of the will and discrepancies in the depositions of the several witnesses who spoke to B's giving the authority to adopt. *Held* by the Judicial Committee, that the probabilities were not adverse to the view that the testator might have modified his original intentions as expressed in his will which was executed before he came to realise how short his life was, and the balance of testimony being distinctly in favour of the story that the authority to adopt had been given, not only had the Trial Court not approached the case with bias but had taken a fair and less one-sided view of the facts than that which prevailed in the High Court. That the view of the Judge who tried the case and saw nearly all the witnesses on a question of evidence such as this was obviously entitled to great weight. That such discrepancies as there were might well be accounted for by the fact that the conversation which the witnesses described had taken place some 13 years previously. At the trial the widow of B, who had come forward to support the adoption, appeared later on to have gone over to the opposite camp, viz., of B, who was opposing the adoption. *Held*, that the omission by both parties to cite her as a witness was in

the circumstances justifiable. The question whether assuming authority to adopt to have been given, the adoption of J's son would make him a son of the testator capable of taking under the terms of the will was raised in the Trial Court and decided in favour of the adopted son and it was not argued in the Appeal Court. The Judicial Committee in the circumstances did not allow the question to be raised before them.

ADWAITYA PRASAD v. BALDEO DASS (1916)
20 C. W. N. 650

7. ————— *Dayabhaya*—

Kayasthas, in Bengal, Sudras—Adoption, amongst *Kayasthas*, religious ceremonies if essential—Religious ceremonies postponed after actual giving and taking—Adoption during pollution through birth of agnate—Validity—Afterborn natural son of Sudra, and adopted son, shares of, if equal—Agreement by adoptive father to give equal share, if valid—Properties held by adoptive father as shebait, adopted son, if may claim to hold as shebait jointly with afterborn son—*Pitrikrityas*, and *Debakrityas*—Proof that property has been endowed as debutter—*Dattaka Chandrika*, authority of. *Kayasthas*, according to the law prevalent in Bengal, are considered as Sudras. No religious ceremony is necessary for an adoption amongst *Kayasthas*, mere giving and taking of a son being sufficient to give it validity. The *putresthi jag* and *namkaran* not being essential ceremonies in an adoption between Sudras, the fact that they took place subsequently to the giving and taking did not affect the validity of the adoption. Pollution on account of the birth of a relative does not vitiate an adoption. It is only a bar to religious acts and renders religious ceremonies inefficacious; but gift and acceptance of a son are secular acts. *Santappayya v. Rangappayya*, I. L. R. 18 Mad. 397, 398, followed. Such pollution results from the knowledge of the fact of birth. In laying down the rule that the adopted son of a Sudra shares the inheritance equally with the afterborn natural son, the *Dattaka Chandrika* has in no way deviated from the *Smritis*, and the rule, which has been accepted as correct by both the Madras and Calcutta High Courts, should not be departed from. An *ekrapatra* of the adoptive father covenanting that an afterborn natural son of his shall not be entitled to claim a larger share but will divide the inheritance equally with the son he was adopting, is valid and operative. *Surendra Keshab Roy v. Doorga Soondary Dasse*, I. L. R. 19 Calc. 513, 536, and *Bhala Nakana v. Prabhu Hari*, I. L. R. 2 Bom. 67, referred to. It is now settled law that, as regards inheritance, the adopted son holds in all respects the same position as an *aurasa* son except in some special matters. An *aurasa* son has a superior right in respect of *pitri-matri krityas* but there is no such preference in respect of *shevas* or *deva-krityas*. Held, therefore, that an adopted son of a Sudra was entitled to inherit debutter properties in the right of shebaitship, jointly with an afterborn natural son. *ASITA MOHON GHOSH MOULIK v. NIRODE MOHON GHOSH MOULIK* (1916) 20 C. W. N. 901

HINDU LAW—ALIENATION.

See HINDU LAW—ALIENATION BY WIDOW.

Alienation by widow
—Legal necessity — Spiritual welfare of her husband—To what extent alienation permissible—Recital in a deed, by itself not conclusive evidence. Where a deed, by a limited owner with qualified power of alienation, is impeached, the test is whether the purpose for which the alienation was made was proper or legitimate. *Collector of Masulipatam v. Cavalry Vencata*, 8 Moo. I. A. 520, referred to. Necessity is only one of the phases of the test of propriety. *Raj Lukhee v. Gokool Chunder*, 13 Moo. I. A. 209, *Sham Sunder Lal v. Achhan Kunwar*, I. L. R. 21 All. 71; I. R. 25 I. A. 183, *Bejoy Gopal Mukerji v. Girindra Nath Mukerji*, I. L. R. 41 Calc. 793, referred to. The widow has a larger power of disposition for religious or charitable purposes or for purposes which are supposed to conduce to the spiritual welfare of her husband than what she possesses for purely worldly purposes. An exhaustive enumeration of these religious or charitable purposes is neither possible nor necessary *Cossinaut Bysack v. Hurrosoondry Dossee*, 2 *Morley's Digest* 198, referred to. This being a question purely of Hindu law, great care must be taken in coming to a decision upon that subject in order to prevent English Judges being warped by impressions made upon their minds in consequence of their habitual application of English law and the nature of English decision to which they are accustomed and to consider in what way a Hindu Court of Justice would have decided the point. The true rule appears to be that there is a distinction between legal necessity for worldly purposes on the one hand, and the promotion of the spiritual welfare of the deceased on the other hand, and that, within proper limits, the widow may alienate her husband's property for the performance of religious acts which are supposed to conduce to his spiritual benefit *Mukhoda v. Kulliani*, 1 Mac. Sel. Rep. 82, *Ram Chunder Surma v. Gungagovind*, 4 Mac. Sel. Rep. 147, *Kartick Chunder v. Gour Mohan*, 1 W. R. 48, *Runjeet Ram v. Mahomed Waris*, 21 W. R. 49, *Ram Kawal Singh v. Ram Kishore Das*, I. L. R. 22 Calc. 506, *Churaman Sahu v. Gopi Sahu*, I. L. R. 37 Calc. 1, *Harmange v. Ram Gopal*, 17 C. W. N. 732, *Rama v. Ranga*, I. L. R. 8 Mad. 552, *Lakshminarayana v. Dasu*, I. L. R. 11 Mad. 288, *Vuppuluri v. Garimilla*, I. L. R. 34 Mad. 288, *Puran Dai v. Jai Narain*, I. L. R. 4 All. 432, *Kupur v. Sebak Ram*, 1 Bor. 193, *Joggiban v. Deoshankar*, 1 Bor. 391, *Chunilala v. Jussoo*, 1 Bor. 55, referred to. A gift of a moderate portion of the property of her husband by the widow with a view to his spiritual benefit is valid. Whether the alienation covers a reasonable portion of the property of the husband of the lady is a question which must be determined with reference to the circumstances of each particular disposition. *Ram Chunder Surma v. Gungagovind*, 4 Mac. Sel. Rep. 147, *Churaman v. Gopi Sahu*, I. L. R. 37 Calc. 1, referred to. Recitals in a deed are not by themselves conclusive evidence

HINDU LAW—ALIENATION—*concl'd*

of their truth and the facts alleged should be proved *abunde* *Bry Lal v Inda Kunwar, I L R 36 All 187*, referred to. *KUN LAL SINGH v AJODHIA MISSEER (1915)*
I. L. R. 43 Cal. 574

HINDU LAW—ALIENATION BY WIDOW.

Legal necessity—Onus of proof of legal necessity as affected by lapse of time—Proof of custom of succession to estate—Limitation—Adverse possession—Res judicata. On this appeal their Lordships of the Judicial Committee affirmed the decision of the High Court which is reported in I L R 33 Cal at page 725 *RAYANESHWAR PRASAD SINGH v CHANDI PRASAD SINGH (1915)*.
I. L. R. 43 Cal. 417

HINDU LAW—COPARCENER.

Decree against one coparcener—Right to attach and sell the interest of another coparcener—Declaration, suit for The plaintiff sued for a declaration that the property of the defendant was liable to attachment and sale in execution of a decree obtained by the plaintiff in another suit (to which this defendant was not a party) against the defendant's undivided brother for money borrowed on the defendant's account. The declaration having been granted, the defendant appealed. *Held*, that where the stage of sale had not been reached, there was no reason for assuming jurisdiction to dispose of property belonging to one who was no party to the suit and was not a representative of the judgment debtor *LAXMAN NILEAST v VINAYAK KESHAV (1915)*.
I. L. R. 40 Bom. 329

HINDU LAW—DAUGHTER'S ESTATE.

Suit by unmarried daughter for possession of her father's property—Death of plaintiff—Rights of married daughters to continue the litigation. A separated Hindu died leaving him surviving a widow and four daughters, three married and one unmarried. After the death of her mother, the unmarried daughter sued to recover possession of her father's estate, naming her three married sisters as *pro forma* defendants. The plaintiff, however, died during the pendency of the suit. The three married daughters were then on their application transferred from the array of defendants to that of plaintiffs. Nevertheless the suit was dismissed upon the ground that it had abated by reason of the death of the original plaintiff. *Held*, that the suit should not have been dismissed. The original plaintiff represented the estate, and her sisters were entitled to continue the litigation which she had commenced. *Mahadeo Singh v S'co Karin Singh, I. L. R. 35 All 181*, and *Venkata Narayana Pillai v Subbammal, I L R. 38 Mad 416*, referred to *Balak Puri v Durga, I. L. R. 30 All 43*, not followed. *JADUBANSI KUNWAR v MADRAL SINGH (1915)*
I. L. R. 23 All. 111

HINDU LAW—DEBT.

Son's liability to pay father's debts—Debts contracted in trade carried on against Government Servants' Conduct Rules, 1904. Sons cannot escape liability for payment of the debts of their father contracted in a trade carried on by him in contravention of Government Servants' Conduct Rules on the ground that the conduct of their father in contracting debts in such trade was *aryarakar* *RAMKRISHNA TRIMBAK v. NARAYAN (1915)* I. L. R. 40 Bom. 128

HINDU LAW—ENDOWMENT.

See HINDU LAW—RELIGIOUS ENDOWMENT

Nature, object, custom and practice of muth or ashral—Right of succession as Mahant, custom of—Mahant appointing a married man and father of children to be Mahant—Abdication by Mahant of his functions—Right of his senior chela to succeed him. In this appeal the question was whether the appellant who claimed to the senior chela of the first respondent, the late mahant who had retired, or the second respondent who claimed to have been appointed by him, was entitled to succeed him as the mahant of the Patepur ashral or muth. On this question their Lordships of the Judicial Committee held (reversing on the evidence the decision of the High Court) in favour of the appellant, mainly on the ground that the second respondent was a married man who had not on initiation renounced his worldly ties and the begetting of children, and was not an ascetic or *bairagi chela*, but was disqualified from holding the office of mahant. As to the nature, object, custom, and practice of such a religious institution. *Sammanika Pandara v. Sillapa Chai, I L R 2 Mad. 175*, was referred to. The question as to who had the right to succeed to the office of mahant depended, according to the well known rule in India, not on the general customary law, but upon the custom and usage of the particular muth. *Mahant Ramanoj Doss v Mahant Debroy Doss, 6 S. D. A. (Beng) 362*, *Greedharee Doss v Sundharsore Doss, 11 Moo. I. A 495* *Mutta Ramalinga Sripathi v Perianayagum Pillai, I L R 11 A 209*, and *Rajiv Varma Valsa v Ravi Varma Kunkki Kutta, I L R 1 Mad 235, I L R 11 A 76*, referred to. On the question as to the second respondent being a married man, on which the Courts below had differed, their Lordships were of opinion that the verdict given by the Subordinate Judge who had the advantage of seeing and hearing the witnesses, could not be lightly set aside, especially as that Judge was also presumably acquainted with the manners and customs of the people among whom such a transaction was alleged to have occurred. There stated verdict. their L weight t —could not safely be departed from in the present case. Though the deeds appointing the second

HINDU LAW—ENDOWMENT—concl'd.

and third respondents to be successively *mahants* were ineffective, the former being not competent to hold the office, and the latter having died, the first respondent could not, in their Lordships' opinion, be considered to be still the *mahant*. He had abdicated all his functions, and had himself retired from the office. A *mahant* was not only a spiritual preceptor, but a trustee in respect of the *asthal*. He had by appointing a married man and father of children to the office consented to a violation of those vows of asceticism and celibacy which it was his duty as a trustee to maintain and protect. His abdication must therefore be accepted as a fact in the case. A vacancy in the office had therefore been created which under the circumstances would devolve upon the appellant who was found to be senior *chela* and was not alleged to be incompetent to be *mahant*. *RAM PRAKASH DAS v. ANAND DAS* (1916) I. L. R. 43 Cal. 707

HINDU LAW—GIFT.

Gift to the illegitimate son of an undivided collateral co-parcener, not ancestral property as between the donee and his son. Property given for maintenance to the illegitimate son of an undivided deceased collateral co-parcener is not "ancestral property" of the illegitimate son in which the son of that illegitimate son gets a right by birth. *Nagalinga Pillai v. Ramachandra Teven*, I. L. R. 24 Mad. 429, and *Hazarimal Babu v. Abaninath*, 17 C. L. J. 38, distinguished. *KRISHNASWAMI NAIDU v. SEETHALAKSHMI AMMAL* (1915) I. L. R. 39 Mad. 1029

HINDU LAW—GUARDIANSHIP.

Mother of infants intending to become and make her boys Christian—Fitness to be Guardian—Bad character not proved—Undertaking not to baptise children—Associating Hindu uncle in guardianship. D, the uncle of two fatherless Hindu boys aged 7 and 5 years respectively, applied to be appointed their guardian, alleging that their Mother S, was a woman of bad moral character and had made up her mind to adopt the Christian religion and to get her sons baptised. The first allegation was not established. *Held*, that the charge of immorality, though not proved, made it impossible for S to live with the family who made the charge must be taken into consideration in passing orders on the petition. That S's expressing a desire to become a Christian or even becoming one would in itself be no ground for removing her from the guardianship, provided she was in a position to satisfy the Court that she was able to carry out the obligations which the law imposed upon her of bringing up her children in the faith of her husband, whatever the faith she herself might adopt. It was proved that she had expressed her intention to convert her sons to Christianity, but her counsel having given an undertaking that she would not baptise her children, the Court passed order appointing her guardian of the minors' person and property, associating in the

HINDU LAW—GUARDIANSHIP—concl'd.

guardianship the uncle D, who would as such guardian be in a position to set that S's undertaking to bring up the children in the Hindu faith was properly carried out. The older boy was ordered to be placed at once as a boarder in a Hindu hostel which, though attached to the Church Missionary Society, was conducted in conformity with Hindu religious views, the younger boy being also ordered to be similarly placed when he should attain the age of 7 years until which time he was to live with S, liberty being given to D to apply to the District Judge whenever a breach of the undertaking was apprehended. *DWIJAPADA KARMAKAR v. MISS BAILEAU* (1915) 20 C. W. N. 608

HINDU LAW—IMPARTIBLE ESTATE.

Impartible estate—Succession—Primogeniture—Estate once in the possession of a family regranted after loss of possession to one member of the same family—Construction of grant. The question whether a certain estate is impartible or not is one of fact in each case. Where an impartible estate is lost to a certain family and on the representation of a member of that family the Government puts him into possession making a grant in his favour without any special term or condition in the grant, the property so restored would be joint family property in the hands of the member of the family to whom the grant is made. When the Government makes a grant of an estate it can determine the nature of the grant; but in the absence of specific terms in the grant the surrounding circumstances must not be ignored. The normal constitution of Hindu family is union. And it is the very essence of an impartible estate that there is no legal right to insist on partition. The estate is enjoyed by the whole family through the occupant of the *gaddi*. *Held*, that, when an impartible estate passes by survivorship from one line of descent to another, it devolves not on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line. *Held*, further, that if the descendants of a junior member of an impartible estate partition the property given to their ancestor for maintenance, it is not conclusive on the point as to whether the estate has ceased to be joint for the purpose of finding out a successor to the *gaddi*. *Kachi Yuva Rangappa Kalakka Thola Udayar v. Kachi Kalayana Rangappa Kalakka Thola Udayar*, I. L. R. 28 Mad. 508, *Katama Natchiar v. The Raja of Shivagunga*, 9 Moo. I. A. 543, *Doorga Persad Singh v. Doorga Konwari*, I. L. R. 4 Cal. 190, *Stree Rajah Yanumula Venkayamah v. Stree Rajah Yanumula Boochia, Venkondora*, 13 Moo. I. A. 333, *Sarluj Kuari v. Deoraj Kuari*, I. L. R. 10 All. 272, *Turu Kumari v. Chaturbhuj Narayan Singh*, I. L. R. 42 Cal. 1179, *Bachoo Harkisondas v. Mankorcbai*, I. L. R. 29 Bom. 51, *Raja Rup Singh v. Rani Baisni*, I. L. R. 7 All. 1, and *Nayaganti Achamagaru v. Venkatachalapati Nayanivarur*, I. L. R. 4 Mad. 250, referred to. *Sri Raja Satrucharla Jagannadha Raju v. Sri Raja Satrucharla Rama-*

HINDU LAW—IMPARTIBLE ESTATE—*contd*

bhadra Rao v. I L R 14 Mad 237, Venkatarayadu v Venkataramayya, I L R 15 Mad 284, Venkata Narasimha Appa Row v Parthasarathy Appa Row, I L R 41 A 51, and Brij Indar Bahadur Singh v Ramee Jankee Koer, I L R 51 A 1, distinguished. BAJINATH PRASAD SINGH : TEL BALI SINGH (1916)

I. L. R. 33 All. 590

HINDU LAW—INFANT.

Power of manager to alienate property—“Benefit” of estate as justifying alienation—Speculative development of minor's estate. If for benefit The rule laid down by the Judicial Committee in Hanooman Pershad Pandey v Munraj Koonwar, 5 Moo I A 373, 423, is not restricted to cases of mortgage or other forms of partial alienation, nor is it restricted in its application to cases of necessity alone, for a “benefit” of the estate is there differentiated from the “need” of the estate as a circumstance justifying alienation. But mere increase in the immediate income of the minor or of his estate does not necessarily justify the inference that the particular transaction is for the benefit of the estate within the meaning of the rule which could not have been intended to include cases of speculative development of estates of minors. KRISHNA CHANDRA CHOUDHURY v RATAN RAM PAL (1915)

20 C. W. N. 645

HINDU LAW—INHERITANCE.

Sudras—Inheritance—

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a legitimoto daughter would be one half of the share taken by the daughter, that is, one third of the whole estate. GANABAI PEERAPPA v BANDU (1915)*

I. L. R. 40 Bom. 369

HINDU LAW—JOINT FAMILY.

See HINDU LAW—JOINT FAMILY PROPERTIES

1. ———— *Alienation of a share of a member of a joint Hindu family—No right to alienate for mere profits from the date of alienation till suit for partition. A purchaser of the undivided share of a member of a joint Hindu family does not thereby become a tenant in common with the other members and hence he is not entitled to any mesne profits in respect of his share for the period between the date of his purchase and the date of his suit for partition. Nanjaya Mudali v Shanmug Mudali, 6 Mal L J 516, followed. The obiter dicta in Ayyappa Venkataramayya v Ayyappa, Ramayya, I L R 25 Mad 690, Chinnai Pillai v Kalimuthu Chetti, I L R 35 Mad 47, and Subba Row v Anantha Narayana Ayyar, 23 Mad L J 61, disapproved and not followed. MAHARAJA of BOROMU v VENKATARAMANJULU NAIDU (1914).*

I. L. R. 33 Mad. 265

HINDU LAW—JOINT FAMILY—*contd*

2. ———— *Father's debt liability of son to pay—Mortgage by father, not proved immoral—Decree against father and sons, form of—Consideration proved—Lender if bound to prove application of money as stated in bond If the consideration for the mortgage was received by the mortgagor, the mortgage cannot be held imperoperative merely because the mortgagee has failed to prove that the money was applied as stated in the mortgage bond. Kishun Pershad Choudhury v Tipan Pershad Singh, I L R 34 Cal 735 a c 11 C W N 613, followed. The mortgage being one executed by a Mitakshara father, and the sons having failed to show that the loan was taken for immoral purposes, a decree was passed in the form it was made in Kishun Pershad v Tipan Pershad, I L R 34 Cal. 735 a c 11 C W N 613, e.g., mortgage decree against the share of the father, and if the sale of that share was insufficient to satisfy the debt, interest and costs, balance to be realised by sale of the son's shares and interest in the ancestral property so far as necessary—six months' time being allowed for redemption. KRISHNA PRASAD : RAMPERSHAD SING (1910)*

20 C. W. N. 503

3. ———— *Joint family—Partition, suit for, by one member, whether effects separation. A member of a joint Hindu family becomes separated from the other members by the fact of suing them for partition. Suraj Narain v Iqbal Narain, I L R 35 All 50, 67, followed. SOUSDARAJAN : ARUSACHALAM CHETTY (1915)*

I. L. R. 39 Mad. 159

4. ———— *Son's liability to pay father's debt—Mortgage by Mitakshara father—Son, though of age, not a party to the deed—His liability—Moral obligation to pay father's debts, unless incurred for immoral purposes—Legal proof of immoral purposes. Liability on the part of a son to pay a father a debt arises from moral and religious duty and obligation and this is so even though the debt is not incurred for the benefit of the individual or for the estate. “A son can only exempt himself from liability if he can establish that the father was guilty of applying the money for some immoral purpose. Although there need not be any direct proof that the money was raised to be spent on any particular person, yet one must be reasonably satisfied that the father was a man of vicious, extravagant and sinful habits and that he raised the money for the purpose of applying it for the immoral purpose. In some way by reasonable legal proof it must be shown that there is a connection with the debt and the immoral purpose. Chintamani Mehendale v Kachinath, I L R 11 Bom 320, and Dattatraya Vishnu v Vishnu Narayan, I L R 35 Bom 61, referred to. To be liable on a mortgage executed by the father for a purpose not proved to be immoral, it is not necessary for the adult sons to be parties to the bond. The case of Upooroop Tewary v Lalla Bandhye Sahay, I L R 6 Cal. 712, seems to have been overruled if not distinctly qualified by the later case, Basu*

HINDU LAW—JOINT FAMILY—contd.

Koer v. Hurry Das, I. L. R. 9 Cal. 495. BHAGAT MAL SAHU v. ABDUL KARIM (1916)

20 C. W. N. 797

5.

Mitakshara law—

Allegation of separation by one member of joint family—Expression of intention to hold share separately followed by suit for partition—Unequivocal and clearly expressed intention—“Separation” as distinct from “division of shares of property.” In this case their Lordships of the Judicial Committee held, on the facts, that the conduct of the plaintiff, a member of a joint Hindu family governed by the Mitakshara law, in indicating by a notice in a registered letter his intention to separate himself and enjoy his share in severalty, coupled with a suit for partition was as “unequivocal” and “clearly expressed” an intention as could be made, and that it amounted to a separation with all its legal consequences. The rule of law applicable to cases of separation from the joint undivided family laid down in *Suraj Narain v. Iqbal Narain*, I. L. R. 35 All. 80; L. R. 40 I. A. 40, followed. Nowhere in the Mitakshara is it stated that agreement between all the coparceners is essential to the disruption of the joint status, or that the severance of rights can only be brought about by the actual division and distribution of the property held jointly. On the other hand, numerous authorities on the subject leave no room for doubt that “separation”, which means the severance of the status of jointness, is a matter of individual volition. Separation from the joint family involving the severance of the joint status so far as the separating member is concerned, with all the legal consequences resulting therefrom, is quite distinct from the *de facto* division into specific shares of the property held until then jointly. One is a matter of individual decision, the desire on the part of any one member to sever himself from the joint family and to enjoy the hitherto undefined or unspecified share separately from the others without being subject to the obligations which arise from the joint status; whilst the other is the natural resultant from his decision, the division and separation of his share, which may be arrived at either by private agreement among the parties, or on failure of that by the intervention of the Court. Once the decision has been unequivocally expressed and clearly intimated to his co-sharers, his right to obtain and possess the share to which he admittedly has a title is unimpeachable: neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons for separation were well founded or sufficient: the Court has simply to give effect to his right to have his share allocated separately from the others. *Madho Parshad v. Mehrban Singh*, I. L. R. 18 Cal. 157; L. R. 17 I. A. 194, *Deo Bunssee Koer v. Dwarkanath*, 10 W. R. 273, *Appovier v. Rama Subha Aiyar*, 11 Moo. I. A. 75, *Joy Narayan Giri v. Girish Chunder Myti*, I. L. R. 4 Cal. 434, L. R. 5 I. A. 223, and *Vato Koer v. Rawshun Singh*,

HINDU LAW—JOINT FAMILY—conclld.

8 W. R. 82, referred to. GIRIJA BAI v. SADASHIV DRUNDIRAJ (1916) . I. L. R. 43 Cal. 1031

HINDU LAW—JOINT FAMILY PROPERTY.

Sale by father during minority of son—Suit by son for cancellation of sale—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 126. A Hindu who at the time had a minor son, sold certain joint property in 1887. The sale was pre-empted and part of the property was subsequently transferred by one of the pre-emptors. The vendor's son attained majority in 1895. More than three years after 1895 three sons were born to him and in 1913 the father and the sons sued for cancellation of the sale-deed of 1881. Held, that the suit was barred by limitation, inasmuch as the title of the son of the original vendor became barred in 1898. The property ceased to be joint family property and the subsequently born grandsons were not in a position to dispute the sale. *LACHMI NARAYN v. KISHAN KISHORE CHAND* (1915)

I. L. R. 38 All. 126

HINDU LAW—MAINTENANCE.

Impartible zamindari—Maintenance of junior members—Basis of the right—Coparcenary right or community of interest by birth not the basis—Relationship to holder of the zamindari, necessary—Provision for maintenance—Agreement with junior member, construction of—Adoption by zamindar—Subsequent bequest of zamindari—Suit for maintenance against legatee—Denial of relationship with legatee—Suit, not maintainable. The plaintiff's father was adopted by the zamindar of Pittapur who died in 1890 leaving a will bequeathing all his properties including the zamindari which is an impartible estate, to the defendant who claimed also to be the natural son of the testator. The late zamindar had entered into an agreement with the plaintiff's father in 1882 whereby he agreed to pay him Rs. 1,500 a month and a lump sum of Rs. 6,000 a year. The will confirmed that arrangement. The plaintiff's father sued to recover the zamindari from the defendant, denying that the latter was the natural son of the late zamindar and also impugning the validity of the will. The suit was finally dismissed by the Privy Council on the ground that the will was valid. The plaintiff brought the present suit to recover maintenance from the defendant from 1902 when he ceased to be maintained by his father. The plaintiff did not admit that the defendant was the natural son of the late zamindar or that he and the defendant were members of an undivided family. The defendant contended that a junior member of the family of the holder of an impartible zamindari was not entitled to claim maintenance from the holder, and that the suit was not maintainable by reason of the agreement with plaintiff's father and the will of the late zamindar and on the ground that the plaintiff did not claim any maintenance as a member of the defendant's family. Held, that the arrangement made by the

HINDU LAW—MAINTENANCE—*contd*

late zamindar with the plaintiff's father was not a provision for the maintenance of the latter and all his descendants, and did not operate to bar the plaintiff's claim. A junior member of the family of the holder of an impartible zamindari is entitled to maintenance only on account of his relationship to the holder and not on account of any coparcenary interest in the property or community of interest therein acquired by birth. *Held* (on the facts of the case), that as the plaintiff did not advance any claim based on relationship but refused to admit any relationship with the defendant, his claim for maintenance could not be sustained. That, as there was no community of interest in the property, it was not burdened with his claims in the hands of the defendant who was the legatee under the will. **SRI RAJAH RAMA ROW v. RAJAH OF PITTAPUR (1915)** I. L. R. 39 Mad 396

HINDU LAW—MARRIAGE.

Marriage of Hindu girl contracted by maternal uncle in the presence of paternal relatives—Injunction obtained by disqualified paternal relative to stay the marriage without reasonable and probable cause—Vain maintainability of suit for damages According to Hindu Law so long as there are competent paternal relatives in existence, the maternal relatives of a girl have no authority to give her in marriage, but in cases where the paternal relatives refuse to act or have disqualified themselves from acting the maternal relatives acquire authority to contract marriage on behalf of the girl. A Hindu girl who was living with her paternal aunt and paternal uncle was made over to her maternal uncle as the result of an agreement come to between the parties. Subsequently the paternal aunt applied to be appointed guardian of the person of the minor, which application was dismissed. After this the maternal uncle of the girl arranged for the marriage of the girl with a certain person. The paternal aunt then obtained a temporary injunction and got the wedding put off. The marriage, however, was accomplished with the person selected by the maternal uncle. The maternal uncle brought a suit to recover damages for the loss caused to him by the wrongful issue of the injunction and the postponement of the wedding. *Held*, that under the circumstances of the case the maternal uncle was competent to enter into a contract of marriage on behalf of the girl, and a suit for damages lay. **Kashuri v. Chiranjee Lal, I. L. R. 35 All 65**, reversed. **KASTURI v. PANNA LAL (1916)** I. L. R. 38 All 520

HINDU LAW—MITAKSHARA.

Hindu in Mahal governed by Mitakshara —Hindu in Mahal governed by Mitakshara. In the town of Mahal in the Pabla District Hindus are governed by the Mitakshara and not by the Vyavahara Mayukha. **NATHAN DAMODAR v. BHAI MOHESHWAR (1916)** I. L. R. 40 Bom. 621

HINDU LAW—PARTITION.

1. — Mitakshara—Joint Family—Karta—Form of account to be directed against the karta on a partition In an ordinary suit for partition of joint family property in the absence of fraud or other improper conduct, the only account the karta is liable for is as to the existing state of the property divisible, and the enquiry directed by the Court must be in the manner usually adopted to discover what in fact the property now consists of. **Chuckun Jall Singh v. Pooran Chunder Singh, 9 W. R. 483, Koneeras v. Gurrai, 1 L. R. 5 Bom 559, Paja Sattruchera Ramabhadra v. Raja Sattruchera Vira Bhadra Suryanarayana, 1 L. R. 22 Mad 470, 1 L. R. 26 I. A 167, Nuryan bin Babaji v. Nathaji Durgaji Marwadi, 1 L. R. 28 Bom 201, Bola Krishna Iyer v. Muthusami Iyer, 1 L. R. 32 Mad 271, and Shookmoji Chandra Das v. Monohar Das, 1 L. R. 11 Cal 684 1 L. R. 12 I. A 103, referred to. Obhoj Chundra Roy Chowdhry v. Pearre Mohun Goocho, 13 W. R. (F. B.) 75, 5 B. L. R. 347 and Damodardas Maneklal v. Uthamram Maneklal, 1 L. R. 17 Bom. 271, explained. **PARMESHWAR DUBE v. GOBIND DUBE (1915)** I. L. R. 43 Cal. 459**

2. — Right to partition—Partition between co-owners—Extraordinary interest—Administrator a power to transfer property—Permanent tenancy—Private and Administration Act (1 of 1881) s. 99 Where plaintiffs in a suit for partition were in joint possession of certain property with the defendants as co-sharers under kases which purported to be permanent kases granted to them under an arrangement sanctioned by the Court and where the only person at the time of the suit interested in challenging the plaintiffs' right was a party to the suit and did not contest the suit—*Held*, that the plaintiffs were entitled to partition and the fact that the partition would have to be set aside if the reversioner coming into possession of the property succeeded in a suit for setting aside the kases was not sufficient ground for refusing the plaintiffs the right to partition. **Sundar v. Parlati, 1 L. R. 12 All 51 1 L. R. 16 I. A 186 and Hingraj Sahai v. Bijai Lohari Miller, 1 I. R. 37 Cal 918 1 L. R. 37 I. A 198 followed. **SALIMULLAH v. PROBHA CHANDRA DEY (1916)** I. L. R. 43 Cal. 1118**

3. — Mitakshara—Partition—Share of step-mother Under the Mitakshara law a step-mother is entitled upon partition of the joint family property, to share equal to that of a son. **Hemargini Dassi v. Ardarnath Karda Chowdhry, 1 L. R. 16 Cal 754 distinguished, Mathura Prasad v. Dola, (1950) 10 Weekly Notes, 124, followed. **HAR NARAI v. BISHAMNATH NATH (1915)** I. L. R. 38 All 83**

4. — Partition—Marriage of co-partner—Provision for expenses of Marriage of partition—Expenses incurred subsequent to suit but before decree—Indiscreetly pre-

HINDU LAW—PARTITION—contd.

sion for future marriage, right for—Decree in partition suit—Gift by co-parcener of lands, less than his share—Validity of—Estoppel. An unmarried co-parcener is not entitled to have an anticipatory provision made for the expenses of his future marriage at partition. *Srinivasa v. Thiruvengathiengar*, 1. L. R. 38 Mad. 556, dissented from. Where the expenses of marriage of a co-parcener were incurred subsequent to the institution of a suit for partition but prior to the decree of the Court of first instance: *Held*, that the severance of the joint family was effected only by the decree, and that the expenses should be credited to him in the account to be taken in the suit. Where a member of a joint Hindu family made a gift of some immovable property, which was not unreasonable regard being had to the extent of his share in all the joint family properties, and his undivided son did not impeach the gift during his father's lifetime: *Held*, that neither the son nor the grandson could question the validity of the same after the donor's death. *NARAYANA v. RAMALINGA* (1915) . I. L. R. 39 Mad. 587

5. *Partition—Shares of adopted son in joint Hindu family and natural born son of another father—Construction of Dattaka Chandrika*, s. 5, paragraphs 24 and 25—Position of adopted son in joint Hindu family. A Hindu joint family in Bombay governed by the Mitakshara law as altered or interpreted by the Vyavahara Mayukha, consisted of two sons H and B. H died in September 1900 leaving a widow who was then pregnant. B died on 17th December of the same year leaving a widow to whom he gave authority to adopt. On 18th December the widow of H gave birth to a son, the respondent; and in February 1901 the widow of B adopted the appellant as a son to her husband. In a suit for partition by the appellant against the respondent. *Held* (reversing the decision of the Appellate High Court, and restoring that of the Trial Judge of the same Court), that, on the construction of paragraphs 24 and 25 of s. 5 of the Dattaka Chandrika, the adopted son was entitled to a share equal to the share of the natural born son. The doctrine according to which an adopted son on partition takes only a reduced share in the family property applies only to cases in which the competition is between an adopted son and a subsequently born natural son of the same father. *Raghubanund Doss v. Sadhu Churn Doss*, 1. L. R. 4 Calc. 425, dissented from. *Tara Mohun Bhattacharjee v. Kripa Moyee Debia*, 9 W. R. 423, and *Dinonath Mukerji v. Gopal Churn Mukerji* 8 C. L. R. 57, followed. As so construed, paragraphs 24 and 25 of s. 5 of the Dattaka Chandrika are not in conflict with any principle of the Mitakshara or of the Vyavahara Mayukha, and they are consistent with the reference to the text of Vasistha in paragraph 1, s. 10 of the Dattaka Mimansa. An adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances which are accurately defined in the Dattaka Chandrika and

HINDU LAW—PARTITION—concl.

the Dattaka Mimansa and relate to marriage and to competition between an adopted son and a subsequently born legitimate son to the same father. *Sumboo Chunder Chowdry v. Naraini Dibeh*, 3 Knapp 55, *Pudma Coomari Debi v. Court of Wards*, L. R. 8 I. A. 229, and *Kali Komul Mozumdar v. Uma Sunker Moitra*, L. R. 10 I. A. 138, followed. The position of an adopted son in the family cannot now be decided by reference to the place which was assigned by Manu to the twelve then possible sons of a Hindu, who, whatever their rights may have been then, are long since obsolete. *NAGINDAS BHAGWANDAS v. BACHOO HURKISSONDAS* (1915)

I. L. R. 40 Bom. 270

HINDU LAW—RELIGIOUS ENDOWMENT.

See HINDU LAW—ENDOWMENT.

1. *Mourashi Muth*, succession to—Onus of proof—Indian Succession Act (X of 1865), s. 187—Will not probated, if can be used in evidence and for what purpose—Indian Evidence Act (I of 1872), s. 32, (5)—Relationship between Mohunt and Chela, if relationship by adoption—Existence of relationship, statement relating to. One R was the Mohunt of a muth known as the Khumbakul Muth. He was succeeded by his chela S. After the death of S the plaintiff claimed to be his lawful successor as his *gurubhai*. The defendant resisted the claim on the allegation that he had been adopted by S as a *chela*. The muth in question was admittedly a *maurasi muth*, and the Court found that in *maurasi muth* the *chela* succeeds and in default of a *chela* the *gurubhai* succeeds and when there are more *chelas* than one the eldest generally succeeds but a junior *chela* may succeed if he be found more capable and if he be selected by the last Mohunt as his successor. *Held*, that it was for the plaintiff to prove that he was the *chela* of R and that the defendant was not the *chela* of S, as he must succeed on the strength of his own title and not on the infirmity, if any, in the title of the defendant. In the course of the evidence in the case two wills alleged to have been executed by R and S respectively neither of which was proved in the Probate Court were produced, the former of which only was found to be genuine. *Held*, that notwithstanding s. 187 of the Indian Succession Act which is incorporated in the Hindu Wills Act, a will not proved in the Probate Court may be used in evidence for a purpose other than the establishment of a right as executor or legatee and in the present case the recital in the will of R, which was found to be genuine, that he had no one else as his *chela* except S was admissible in evidence under s. 32, cl. (5), of the Evidence Act inasmuch as the relationship between a Mohunt and his *chela* is a relationship by adoption and a statement that A has one *chela* B and has no other *chela* is a statement relating to the existence of a relationship. *ACHYUTANANDA DAS v. JAGANNATH DAS* (1914) . 20 C. W. N. 122

HINDU LAW—RELIGIOUS ENDOWMENT— could

2 ————— *Proof that property has been endowed as debutter—Permanent image if essential to valid dedication*—A permanent image is not absolutely essential for dedication to a *ihakur*. Where the intention of the donor appeared to have been to dedicate the property absolutely to *deva sheta*, the fact that the income of the property exceeded the expenses of the *sheta* and the *shetabs* frequently dealt with the property or the income as personal property would not make the property secular subject to a charge for the *deva sheta*. *ASITA MONOV GHOSH MOTILAL v. NINONE MONOV GHOSH MOTILAL* (1916) 20 C. W. N. 901

3 ————— *Sheta ship devolution of, to heirs in the absence of directions by founder, on the death of last sheta duly appointed by him—Will giving estate to idol and appointing successive executors—De facto appointment of sheta—Vested interest, principle of—Sheta's office and rights nature of* A Hindu testator

that his two sons by his first wife would not be appointed executors. After the death of the second wife and her sons J and B her other two sons died, one leaving a widow defendant No. 1. Of the two sons of the testator by his first wife one (defendant No. 2) was living and the other had died leaving a son the plaintiff who brought the present action for a declaration that he had a four annas share in the *sheta*ship of the *Deity* *Held*, that the effect of the will was to constitute the second wife and her sons J and B successive

of his son B. In the circumstances the devolution of the office of *sheta* follows the line of inheritance from the founder in other words, it passes to his heirs unless there has been some usage or course of dealing which points to a different mode of devolution. That on the death

intended to exclude his sons by his first wife, for the heir at law though in terms excluded from benefit under the will cannot be excluded from his general right of inheritance without a valid devise to some other person. *Tagore v. Tagore* 1 L. J. 1 (Sup. Ct.) 47 GG. That the plaintiff had a four annas share in the *sheta*ship. That the principle of vested interest while the actual enjoyment of the expected interest is postponed till the termination of the life-estate has no application to cases of the present des-

HINDU LAW—RELIGIOUS ENDOWMENT— could

cription. That a *sheta* holds his office for life but this does not signify that he has a life interest in the office with the remainder presently vested in the next taker. The entire office is vested in him, though his powers of alienation are qualified and restricted. The position of a *sheta* is analogous to that of a Hindu female in possession of the estate of the last full owner rather than to that of the holder of a life-estate and

the heirs of the founder provided the last *sheta* has not taken it absolutely when the office has so vested in them upon the death of each member of the group it passes by succession to his heir subject to the important qualification that the rule—that when a worship of *thakur* has been founded the *sheta*ship is vested in the heirs of the founder in default of evidence that he has disposed of it otherwise or of there being some evidence of usage course of dealing or some circumstances to show a different mode of devolution—cannot be applied so as to vest the *sheta*ship in persons who according to the usages of the worship cannot perform the rights of the office. *KUNJAMANI DASSI v. NIKUNJA BIHARI DAS* (1915) 20 C. W. N. 314

HINDU LAW—REVERSIONER.

Right of presumptive reversionary heir to declaration of his right—Suit against widow in possession of her husband's estate for waste and wrong dealing with property—Failure to prove charges—Right of reversioner to sue for protection of the husband's estate. A plaintiff who brought a suit as presumptive reversionary heir against a widow in possession of her husband's estate in order to protect the property, and made charges against the widow of waste misappropriation and other wrong dealing with the property in no case of which charges were established, was held not entitled to a declaration of his right as reversionary heir, even though his title had been disputed in the suit. It is not legitimate to give such a plaintiff under cover of a prayer for further relief and after the substantial heads of his claim have failed any greater right to obtain such a declaration than he would have had if it had been asked for directly and unaccompanied by other and unfounded claims. *Jagpal Kumar v. Indar Bahadur Singh*, 1 L. R. 26 All. 233 L. R. 311 167 111 *Indar Bahadur Singh v. Puri v. Subhramanyam* 1 L. R. 35 Mad. 116 L. R. 42 1 1. 2 distinguished. *JANAKI AMMAL v. NARAYANASAMI SWER* (1916)

I. L. R. 30 Mad. 634

HINDU LAW—STRIDHAN.

1 ————— *Inheritance—Female heirs.* Stridhan inherited by female heirs does not become the heirs' estate. The female heirs take only a Hindu woman's estate

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in the property. *Sheo Shankar Lal v. Debi Sahai*, I. L. R. 25 All. 463; L. R. 30 I. A. 202, *Pranlissen Laha v. Noyanmoney Dassee*, I. L. R. 5 Calc. 222, and *Huri Doyal Singh Sarmana v. Grish Chunder Mukerjee*, I. L. R. 17 Calc. 911, referred to. *JOGENDRA CHANDRA BANERJEE v. PHANI BHUSAN MOOKERJEE* (1915)

I. L. R. 43 Calc. 64

2. ————— *Succession—Dayabhaga—Daughter's daughter, if may succeed—*

Daughter succeeding to mother's stridhan, whether takes it as stridhan. The general principle in Bengal is that women can only inherit under some express text, and a daughter's daughter is not included in the text-books in the special line of heirs to stridhan, whether the stridhan is of the class known as *yautaka* or *ayautaka*. A woman inheriting stridhan property takes only the limited estate of a Hindu woman in such property and on her death it passes to the heir of the woman whose stridhan it was. *MADHUMALA DASSI v. LAKSHAN CHANDRA PAL* (1913).

20 C. W. N. 627

3. ————— *Saudayika—Gift*

of property by a father to his daughter before her marriage—Power of alienation. A gift of property by a father to his daughter before her marriage is *saudayika stridhanam* which is at her absolute disposal. *Per SESH AGIRI AYYAR J.—Saudayika stridhanam* is gifts from affectionate kindred and includes both *yautaka* and *ayautaka* not received from strangers. Hindu Law texts examined. *Ponnusowmy Moodelly v. Subbaroya Moodely* (1859) 6 Selwin's S. D. A. Rep. 7, referred to. *Jadoo Nath Sircar v. Busunt Coomar Roy Chowdhry*, 19 W. R. 264, applied. *Bhau v. Raghunath* I. L. R. 30 Bom. 229, referred to. *Dantuluri Rayappara v. Mallapudi Rayudu*, 2 Mad. H. C. R. 360, distinguished. *Quere: Whether immoveable property received from the husband should be excluded from this species of disposable property.* *MUTHUKARUPPA PILLAI v. SELLATHAMMAL* (1914) . . . I. L. R. 39 Mad. 298

4. ————— *Mitakshara Suc-*

cession—Adoption—Rights of adopted son—Competition between adopted son and natural son of co-wives—Sapindas—Co-wife's natural son, if "son"—Texts, construction of—Mitakshara, Ch. II s. XI, paras. 9, 11, 25—"Without issue" meaning of—Manu, Ch. IX, verse 183—Yajnavalkya Ch. II, verses 117, 145. S, a Hindu governed by the Mitakshara school of Hindu Law, married four wives in succession. In conjunction with his first wife, by whom he had no issue, he adopted a son H. By his second wife, S had a son G born to him. S predeceased his fourth wife M, having had no issue by her. M died intestate. On a suit brought by H:—*Held*, that both H and G were entitled to succeed to M's stridhan property as *sapindas* of S, and in the absence of any express text curtailing the rights of the adopted son in the circumstances of the present case, H was entitled to share equally with G on the general principle that the adopted son occupies

HINDU LAW—STRIDHAN—conclld.

the same position as a natural son and his rights are in every respect similar to those of a natural son. *Joykishore Chowdhury v. Panchoo Baboo*, 4 C. L. R. 302, *Padmakumari Devi v. Court of Wards*, I. L. R. 8 Calc. 500, L. R. 8 I. A. 229, followed. *Nagindas Bhagandas v. Bachoo Hurlissendas*, I. L. R. 40 Bom. 270, referred to. The expression "without issue" in Mitakshara, Chap. II, s. XI, para. 9, must be construed in its ordinary sense, and M must be deemed to have died "without issue." *Quere: Whether Manu, Chap. IX, verse 183 has any reference to questions of inheritance.* *Annapurni Nachiar v. Forbes*, I. L. R. 23 Mad. 1, *Bhimacharya v. Ramacharya*, I. L. R. 33 Bom. 452, referred to. *Per MOOKERJEE J. A.* special text forming an exception to a general text should be construed strictly and applied only to cases falling clearly within it. *Gangn v. Chandrabhagabai*, I. L. R. 32 Bom. 275, and *Anandi v. Hari Suba*, I. L. R. 33 Bom. 401, referred to. *GANGADHAR BOGLA v. HIRA LAL BOGLA* (1916) . . . I. L. R. 43 Calc. 944

HINDU LAW—SUCCESSION.

1. ————— *Dayabhaga School*

—Whether great-grandfather's son's daughter's son or maternal uncle preferential heir—Stare decisis. In a Dayabhaga family the great-grandfather's son's daughter's son is entitled to succeed as heir in preference to the maternal uncle. *Kailash Chandra Adhikari v. Karuna Nath Chowdhry*, 13 C. W. N. 477, followed. The principle of spiritual benefit regarding the succession in a Dayabhaga family laid down by the Full Bench in *Gooroo Gobind Shaha's Case*, 13 W. R. (F. B.) 49; 5 B. L. R. 15, cannot be questioned now. *KEDAR NATH BANERJEE v. HARI DAS GHOSE* (1915) . . . I. L. R. 43 Calc. 1

2. ————— *Illegitimate son of*

a Sudra by a dancing woman kept in continuons and exclusive concubinage—Right to succeed to joint family property. The illegitimate son of a Sudra by a dancing woman who was by profession a prostitute before she came into his keeping but who was kept by him in continuons and exclusive concubinage thereafter, is entitled to get his appropriate share in the joint family property after his father's death provided the connection between his father and mother was not incestuous or adulterous. This right is not subject to a further condition that a marriage could have taken place between the father and the mother according to the custom of the caste to which the mother belonged. *SUNDARARAJAN v. ARUNACHALAM CHETTY* (1915)

I. L. R. 39 Mad. 136

3. ————— *Lunacy—Effect on*

the devolution of immovable property of lunacy of next heir—Suit to recover possession from daughter of lunatic—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 111. A person is disqualified under the Hindu law from succeeding to property if he is insane when the succession opens, whether his insanity is curable or incurable.

HINDU LAW—SUCCESSION—*concl'd.*

Deo Kishen v. Budh Prakash, I. L. R. 5 All. 503, and *Tirben Sahai v. Muhammad Umar*, I. L. R. 23 All. 247, referred to. The daughter, therefore, of such person would derive no legal title through her father. The legitimate wife of a lunatic Hindu took possession during his life time of certain immovable property which had belonged to his father and subsequently transferred part of it to her daughters and to the husband of one of them. She retained a portion herself, which after her death came into the possession of one of the daughters. *Held*, that a suit to recover the property of which possession

MUSAMMAT BHANI (1915) I. L. R. 28 All. 117

4. — *Mitakshara—Succession—Bondhu—Mother's brother's son preferred to mother's sister's son.* According to Hindu law of the Mitakshara school, the mother's brother's son takes precedence as an heir over the mother's sister's son. *Appandai Pathiyar v. Ragubai Mudaliyar*, I. L. R. 33 Mad. 439, dissented from. *Buddha Singh v. Lallu Singh*, I. L. R. 37 All. 604, referred to. *RAM CHARAN LAL v. RAMJI BAKSH* (1910) I. L. R. 38 All. 418

HINDU LAW—WIDOW.

1. — *Decree against widow for husband's debt—Attachment of property—Previous alienation by widow for no justifiable cause—Attachment and sale thereupon, effective to convey reversionary interest.* A plaintiff who had obtained a decree against a Hindu widow in respect of a debt due by her late husband attached a certain property as belonging to her husband which she had sold to a stranger several years before the attachment, for no purpose binding on the reversioner. *Held*, that the decree holder was entitled to attach and bring to sale the reversionary interest in the property, subject to the enjoyment thereof by the widow during the widow's lifetime. *CHIDAMBARANNA v. HUSSAINANNA* (1915) I. L. R. 39 Mad. 565

2. — *Alienation by widow of her husband's estate—Surrender by widow to nearest reversioner, subsequent to alienation—Effect of surrender on alienations.* A surrender by a Hindu widow of her interest in her husband's estate in favour of the nearest male reversioner cannot affect alienations, which were made by her prior to the surrender and which though not binding on the reversioners were binding on her

I. L. R.
Thetty v.
N. 735.

33 Bom. S., dissented from. *SUBBANNA v. SUBBANAYAN* (1915) I. L. R. 39 Mad. 1035

3. — *Hindu widow—Effect of compromise entered into by a Hindu widow*

HINDU LAW—WIDOW—*concl'd*

with a limited estate—Rights of reversioners. A Hindu widow in possession as such of her husband's estate brought a suit for possession of two shops on the allegation that they formed part of her husband's estate. The suit was compromised, the effect of which was that the widow recognized the defendants as full proprietors and they, on the other hand, had to pay a certain sum of money. To raise this money they mortgaged the two shops. The mortgagee brought a suit for sale and the shops were purchased by one H, at the auction sale. After the death of the widow the reversioners of her deceased husband brought a suit to recover possession of the aforesaid shops. *Held*, that a compromise entered into by a Hindu widow, with a limited estate, resulting in the alienation of property forming part of her husband's estate cannot bind the reversioners, unless it is shown that it was for such purposes as would justify a sale by a Hindu widow. — *Imrit Kanwar v. Kooop Narain Singh*, G. C. I. R. 76, *Musammatt Roj Kanwar alias Sheo Mutal Roer v. Musammatt Inderyat Kanwar*, S. B. L. R. 555, *Rajalakshmi Datta v. Kalyani Datta*, I. L. R. 38 Cal. 639, *Khunni Lal v. Gobind Krishna Narain*, I. L. R. 33 All. 356, *Mohadeo v. Baldeo*, I. L. R. 30 All. 75, and *Bhauri Lal v. David Huanin*, I. L. R. 35 All. 210, referred to. *KANHAIYA LAL v. KISHORI LAL* (1910) I. L. R. 38 All. 679

4. — *Maintenance secured by deed—Subsequent unclasticity—Living chaste at the time of suit, effect of.* Where in a suit by a Hindu widow against her deceased husband's brother for maintenance at the rate fixed by agreement, it was found that the plaintiff had since lived an immoral life but reformed her ways at the time of the suit. *Held*, that she lost her right to the rate fixed in the deed but was entitled to a starving allowance. Texts and case law reviewed. *SATHYANNAHA v. KESAVA-CHINNA* (1915) I. L. R. 39 Mad. 659

HINDU LAW—WILL.

1. — *Construction of will—Contingent bequest in futuro of whole estate—Succession Act (A. of 1865), ss. 107, 111—Event on occurrence of which distribution was to take place, specified in will.* The will of a Hindu resident in Calcutta and subject to the Dayabagga School of law, who died on 10th November 1907, stated, "I appoint my wife Parotesimi Dasi to be the sole executrix of this my will. I hereby authorize my said wife to adopt *dattala putra*. In case of death of an adopted son my said wife shall adopt one after another five sons in succession. If my said wife dies without adopting a son, or if such adopted son predeceases her without leaving any male issue, in such case my estate after the death of my said wife shall pass to the sons of my sister Benodini Dasi who may be living at the time of my death." Two sons of his sister were living at the death of the testator. On his death his widow as executrix duly obtained probate of the will, and in August 1909, in p—

HINDU LAW—WILL—contd.

suance of the authority given her by her deceased husband, she adopted a son who, however, died on 10th March 1910, an infant unmarried and leaving no male issue; and a few days afterwards the widow herself died. In a suit by the adoptive mother of the testator, now represented by the appellants, against the two sons (the present respondents) of his sister, for a declaration that in the events that had happened the devise to them had failed, and that the testator's estate had devolved on her. *Held*, on the construction of the will (affirming the decisions of the Courts in India), that on the death of the testator the widow took an interest in the estate which by virtue of the probate was not divested on her adoption of a son to her husband, and on her death the executory bequest to the sons of the testator's sister took effect and the estate passed to them. Section III of the Succession Act (X of 1865) was not applicable because the event on the occurrence of which the distribution was to take place was distinctly mentioned as, in the words of the will, "the death of my wife," and the gift to the testator's nephews was therefore not affected by that section. **BHUPENDRA KRISHNA GHOSE v. AMARENDRA NATH DEY (1915)**
I. L. R. 43 Calc. 432

2. ————— *Revocation of will—Will disposing of property and nominating boy for adoption to be completed later and giving wife power to complete it if he does not do so—Subsequent completion of adoption by testator—Subsequent will making different disposition of property, but not revoking former will—Later will held in former suit illegal as disposing of ancestral property, which testator had no power to do—Dependent relative revocation.* A Hindu testator being the sole co-parcener of certain property made a will in 1889 by which he appointed his wife S, and his daughter R executrices, and in which he nominated as his son, one V, a son of his daughter, but stated that he had not completed the adoption, and he directed that if he should die before completing it, S should after his death perform the necessary ceremonies, and take the grandson in adoption, and the will contained the following clause:—"In case any danger may happen to my grandson V during the lifetime of my wife S who is one of my executrices, my wife may according to her wishes take in adoption one of my aforesaid daughter's sons, and give my properties to that son." The testator completed the adoption of V on 9th February 1890. On 21st March 1890 he executed another will of which a third person was made executor together with S and R and which contained a gift that in case of the death of V his issues should enjoy the property. There were in it no words revoking the previous will, and it did not refer to the clause in the former will which gave S a contingent power of adoption. On 4th April 1890 the testator died. The will of 1889 was not admitted to probate, but a grant of probate was made of the will of 1890. V died on 4th June 1891. In 1894 the appellant as reversionary heir of V obtained

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a decree declaring the will of 1890 void and inoperative according to Hindu law as disposing of ancestral property over which the testator had no power of disposal. On 13th August 1906 S adopted the respondent P in accordance with the authority given her by the will of 1889. In a suit by the appellant against S and P for a declaration that P's adoption was illegal and invalid. *Held*, that the document executed by the testator in 1889 was a will, and not a mere non-testamentary authority to adopt. It contained the appointment of executors, and was executed by a testator who at his date had power to dispose of the property of which he purported to dispose. *Held*, also, that after the completion of V's adoption and the consequent admission into the joint family of another co-parcener, the testator had no power to dispose of the property which on his death was ancestral property, and to that extent the will of 1889 became ineffectual. But there was no such inconsistency between the two wills as that the provisions of the earlier will could not stand with the existence of the later will. The will of 1890 no doubt prevailed over the will of 1889, but the contingent power to adopt was unaffected by anything in the later will. *Held*, further, that the question whether the disposition of the property in the later will revoked the provisions as to its disposal in the earlier will, turned upon the application of the doctrine of dependant relative revocation which was really a question of intention, and that under the circumstances an alternative inconsistent disposition which was not valid or effectual in itself did not revoke an earlier disposition of the same property. *Alexander v. Kirkpatrick, L. R. 2 H. L. Sc. & Div. 397*, followed in principle. **VENKATANARAYANA PILLAY v. SUBBAMMAL (1915)**
I. L. R. 39 Mad. 107

3. ————— *Construction of will—Will of Hindu widow in possession of her husband's estate—Bequest of whole estate to one person on conditions—Conditions containing exception to conveyance of entire estate—Bequest of portion of estate to different legatee—Owner in possession—Malik-o-qabiz—Absolute or limited estate.* A Hindu widow in possession of her husband's estate disposed of it by will as follows:—"Under the will of my husband I am the sole 'owner in possession' of his entire estate and possess all the proprietary powers . . . I bequeath the entire estate of my husband to Fateh Chand . . . subject to the following conditions . . . (i) So long as I live I shall continue to be the 'owner in possession' of the entire estate . . . and possess all the powers and such as making sales, mortgages, gift, etc. (ii) After my death the said person (the legatee) shall become 'owner in possession' of the entire estate of my husband, and he, too, shall possess all the powers of alienation like myself. (iv) I have bequeathed mauza Khudda with all the property to Musammatt Gomi . . . After my death she shall be the 'owner in possession' of the entire property in

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mauza Khudda aforesaid" Held (affirming the decision of the High Court), that on the construction of the will the words "owner in possession" (*Maliq gahiz*) in cl 4, conferred on Musammam Gomi an absolute estate, and that completeness of the ownership and possession was not altered by any other expressions in the will *Surayams v Rabi Nath Ojha*, I. L. R. 30 All. 84, L. R. 35 I. 17. Taking all the clauses of the will together there was no repugnancy in such a construction, for, though the entire estate was conveyed in the first place to Fatch Chand, it was subject to conditions, one of which (cl 4) bequeathed mauza Khudda as an exception to the conveyance of the entire estate *FATCH CHAND v. RUP CHAND* (1916) I. L. R. 38 All. 448

4. ——— Will—Co executors
—Probate obtained by one executor—Subsequent application by the other co executor for joint probate
—Compromise between co executors—Mortgage of estate by one executor to the other—Renunciation of executorship—Validity of compromise—Action of executor without probate, validity of—Probate and Administration Act (V of 1881), s. 2, 4, 82, 92—Applicability of, to all Hindus—Executor, trustee of charities under the will—Claims of trustee against trust estate—Charge—Limitation Act, s. 130—Suit for account and for scheme, against trustee—Right of trustee as defendant to equities in such suit—Decree in favour of trustee as defendant—Civil Procedure Code (Act I of 1908), s. 92 It is doubtful if an executor is competent in law to compromise

estate *Per WALLIS, C J*—The Probate and Administration Act does not say that s. 82 is to apply only to cases of Hindus governed by the Hindu Wills Act, but s. 2 provides that chapters II to XIII, which include s. 82 are to apply to every Hindu. *Per HESHAGINI AYYAR J*—It is not incumbent on an executor of the will of a Hindu to obtain probate before acting as an executor. S. 82 of the Probate and Administration Act is no bar to an executor acting as a representative of a Hindu testator's estate, because a co executor had alone obtained probate of the will in his name. S. 92 of the said Act should be confined to cases where probate is compulsory before dealing with the property. An executor, who was appointed trustee of a charity under a will and who had claims against the estate in respect of his administration, has no charge on the estate in respect of such claims but should bring his suit within six years under art. 120 of the Limitation Act. But when a suit was brought against him for an account, if he was under a liability to account to the trust at the date of the suit, he would be entitled to all the equities flowing from the taking of the account and a decree could be passed in such suit in her favour for the amount that might be found due to him from the estate, though a suit by the

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trustee for the same might be barred by limitation *CHIDAMBARA MUDALIAR v. KRISHNASAMI PILLAI* (1914) I. L. R. 39 Mad. 365

5. ——— Construction—
Absolute gift—Rules of construction approved by Courts—Effect of subsequent clauses in will rectifying absolute gift created in previous clauses—Will of a Hindu, matters which Court may consider in construing—*Mohit*—*Nirbyudha mohit*, meaning of A Hindu testator left a will the material portions of which were as follows. The second and third clauses of the will appointed the testator's widow as executrix and authorised her to meet the expenses and pay the debts by sale, if necessary, of a portion of the estate. The fourth clause provided that the widow shall obtain as *nirbyudha mohit* whatever moveable and immoveable properties shall be left by the testator and she shall be the absolute owner with the rights of gift, sale and all other kinds of transfer. In the next three clauses the testator authorised the widow to adopt a son and prescribed the devolution of the estate in the event of such adoption and in the last clause he provided that if at the time of the death of his widow there be no adopted son or if no son or wife of the adopted son be alive, then the testator's heir according to the Hindu *shastras* who shall be alive at the time shall get the properties which shall remain after disposal by the widow by way of gift or sale of the same. Held, that under the fourth clause of the will the widow took an absolute interest in the estate devised and the gift over contained in the last clause of what might remain undisposed of by her was void and inoperative in law. That the provisions of the will relating to adoption and the devolution of the estate in the event of adoption could not qualify the effect of the fourth clause even though they contained provisions repugnant thereto. That where an absolute interest is given the Court will not cut it down by subsequent words in the will unless they clearly have an effect to restrict it. That where a devise takes an absolute interest a gift over on his failure to dispose of the property or what ever part of the property he does not dispose of is void. That the rule of construction applicable to cases of this description is that not only ought the Court to look to the words of a will alone to determine the operation and effect of the devise, but the Court ought to disregard altogether the legal consequences which may follow from the nature and qualities of the estate when such estate is once collected from the words of the will itself. *Scarborough v. Duple*, 3 J. & P. 527, 562. The instrument must receive a construction according to the plain meaning of the words and sentences therein contained, that is, the words are to be first read in their grammatical and ordinary sense unless the context shows otherwise. That in construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary customs and usages of Hindus with respect to the devolution of property, namely, that a Hindu generally

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charges that an estate, specially an ancestral estate, shall be retained in his family and also that a Hindu knows that as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate but where the terms are perfectly clear the Court cannot assume contrary to the plain meaning thereof that the testator intended to create estates of a particular description and then bend and twist the language in favour of the assumption made. That the use of the term *could* may not by itself necessarily create an absolute interest but the expression *should* would be the strongest and most unequivocal phrase employed in the vernacular to indicate absolute ownership. *Srinivas Chetty v. Parvathi Bai* (1913) 20 C. W. N. 463.

HINDU LAW—WOMAN'S ESTATE.

1. *Legal necessity—Mortgage of daughter's daughter when woman law property of legal necessity—Construction—Mortgage of mother's "right and interest" of daughter in her life interest.* Where A, a zemindar's widow, married her only daughter S to a cultivator in order that the in-law may come and live in the mother-in-law's house, and the issue of the marriage was a daughter: *Held*, that though A might be under a moral duty to see that the girl was properly married, the expenses of the marriage could not be charged on her husband's estate as a legal necessity. The fact that a Hindu widow says she is mortgaging "her right and interest" in her husband's estate does not necessarily indicate that she was mortgaging only a life interest. *NARAYAN v. RAMDHARI SINGH* (1916) 20 C. W. N. 734.

2. *Alienation by limited owner—Property, test of—"Legal necessity" of only test—Consent of reversioner—Relation of deed followed by subsequent ratification—Retrospective operation—Compromise and family arrangement—Compromise by limited owner—Bona fides of claim—Admission in compromise of futility of claim, if negatives bona fides—Conveyancing device not intended to express true state of executant's mind, effect if to be given to—Compromise which affirms previous executed registered lease, if requires registration.* The test to be applied in determining the validity of an alienation by a limited owner is whether the purpose for which the alienation was made was in the circumstances of the case proper and legitimate, and the existence of "legal necessity" in the narrow sense of actual pressure on the estate or the danger to be averted is not the only test. *Held*, that in this case a permanent *mokurari* lease granted by the daughter of a deceased Hindu of some properties belonging to his estate in settlement of a *bona fide* dispute was binding on the reversioner. *Khunni Lal v. Gobind Krishna Narain*, L. R. 38 I. A. 87; s. c. I. L. R. 33 All. 356; 15 C. W. N. 515, applied. Where it appeared that the permanent lease was not only attested by

HINDU LAW—WOMAN'S ESTATE—*contd.*

the reversioner but that he later on set up the lease in answer to a suit of the grantee claiming the entire estate by survivorship as the undivided coparcener of the last male owner and ultimately joined in a compromise by which the plaintiff in the suit admitted that he had no title to the estate and the reversioner affirmed the *mokurari polla*: *Held*, that if there was doubt as to the efficacy of consent as evidenced by the attestation, there was no question as to his subsequent ratification of the lease which operated retrospectively. That the compromise was not inadmissible in evidence for want of registration as it did not purport to convey, release or otherwise deal with immovable property. *Per MOOKERJEE J.*—It only recorded the approval of the transaction by the reversionary heir and (per *Curiam*) afforded cogent evidence of its propriety. *Collector of Masulipatam v. Caruly Venkata Narrainayak*, 8 Moo. I. A. 523, 551, *Shamsundar v. Achhan Koor*, L. R. 25 I. A. 183; s. c. I. L. R. 25 All. 71; 2 C. W. N. 729, and *Bejoy Gopal Mukerjee v. Girindranath*, I. L. R. 11 Calc. 793, 805; s. c. 18 C. W. N. 673, referred to. That the recitals in the *mokurari polla* depreciatory of the grantee's claim should not be regarded as a correct description of his mind, being only a conveyancing device expressive of his abandonment of the claim for a consideration. *Hanooman Prosad v. Baldeo Monraj Kooeri*, 6 Moo. I. A. 393, and *Lal Achal Ram v. Raja Kazim Hossain*, L. R. 32 I. A. 113; s. c. I. L. R. 27 All. 271; 9 C. W. N. 177, referred to. Authorities dealing with the validity of compromises in settlement of disputed claims and of family arrangements with reference to the question of consideration examined by Mookerjee, J. *Per MOOKERJEE J.*—A qualified owner like a Hindu widow, daughter, or mother is not bound at her peril to pursue a litigation in respect of the estate in her hands unremittingly to the ultimate Court of Appeal. *UPENDRA NATH BOSE v. BINDERSHI PROSAD* (1915) 20 C. W. N. 210.

3. *Widow, alienation by, when binds reversioner—Relinquishment for a consideration—Relinquishment of whole estate necessary—Widow retaining moveables and getting back some land to hold as life estate—Mithila law—Family arrangement.* It may be taken as established without doubt that a Hindu widow may relinquish her estate and this will have the effect of accelerating the estate of the next reversioner. Further, an alienation by a Hindu widow will be valid where there was consent of the next heirs and the alienation is capable of being supported by reference to the theory of relinquishment and consequent acceleration of the interest of the consenting heirs. But the alienation in such a case must be of the whole of the estate. *Debi Prosad Chowdhury v. Gopal Bhagat*, I. L. R. 40 Calc. 721; s. c. 17 C. W. N. 721, referred to. The widow is not precluded from obtaining a benefit for relinquishing her estate. *Nobokishore v. Hari Nath*, I. L. R. 10 Calc. 1102, 1108, followed.

HUSBANDS' DEBT—*could.*

— decree against widow for—

See HINDU LAW—WIDOW.

I. L. R. 39 Mad. 565

HYPOTHECATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 83 I. L. R. 39 Mad. 579

I**IDENTITY.**

— proof of—

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 1128

ILLEGITIMATE SON.

See HINDU LAW—INHERITANCE.

I. L. R. 40 Bom. 369

— gift to—

See HINDU LAW.

I. L. R. 39 Mad. 1029

— of a Sudra—

See HINDU LAW—SUCCESSION.

I. L. R. 39 Mad. 136

ILLUSTRATIONS TO STATUTES.

See EVIDENCE. L. R. 43 I. A. 256

IMMOVEABLE PROPERTY.

See SALE. I. L. R. 43 Calc. 790

— restoration of, to judgment debtor—

See LIMITATION ACT, 1908, SCH. I., ARTS. 165, 181. I. L. R. 38 All. 339

Order regarding possession of, following acquittal in case under ss. 447 and 426 of the Penal Code, propriety of.—The accused were tried for offences under ss. 447 and 426, Indian Penal Code, for having cut and removed some bamboos from a bamboo clump alleged by the complainant to be his. The trying Magistrate acquitted the accused but directed that the complainant was to retain possession of the bamboo clump until ousted by the Civil Court. The High Court set aside the order so far as it contained the direction about the bamboo clump. *RADHA KANTA GUIN v. KARTIK GUIN* (1916).

20 C. W. N. 1302

IMPARTIBLE ESTATE.

See HINDU LAW—IMPARTIBLE ESTATE.

I. L. R. 38 All. 590

IMPARTIBLE ZAMINDARI.

See HINDU LAW—MAINTENANCE.

I. L. R. 39 Mad. 396

IMPOSSIBLE CONTRACT.

See CONTRACT ACT (IX OF 1872), ss. 56, 65. I. L. R. 40 Bom. 529

IMPRISONMENT.

— without first ordering attachment—

See CIVIL PROCEDURE CODE (ACT V OF 1908), R. 1 (r) AND O. XXXIX, R. 2, CL. (f). I. L. R. 39 Mad. 907

INAM.

See PERSONAL INAM.

— grant of—

See CIVIL COURTS.

I. L. R. 39 Mad. 21

INAM SERVICE.

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), ss. 5 AND 10, CL. (2).

I. L. R. 39 Mad. 930

INCOME-TAX ACT (II OF 1886).

Part IV, Sch. II, s. 3, cl. (5)—Annuity in Mysore Province—Annuitant resident in British India—Remittance by agent to her in British India—"Income", meaning of—Income, if taxable in British India. Where a person was enjoying an annuity in Mysore Province, instalments of which were remitted by her agent to her while she was resident in British India, the remittances were "income" under Part IV of Sch. II of the Income-Tax Act, and these sums were "received in British India" within the definition contained in s. 3, cl. (5), of the Act and therefore taxable. *NARASAMMAL v. THE SECRETARY OF STATE FOR INDIA* (1915). I. L. R. 39 Mad. 885

INCORPORATED COMPANY.

See SALE. I. L. R. 43 Calc. 790

INCUMBRANCE.

See SALE FOR ARREARS OF REVENUE.

I. L. R. 43 Calc. 779

Absolute sale—Unregistered purchaser of portion of patni tenure, interest of, whether an incumbrance—Bengal Tenancy Act (VIII of 1885), ss. 161, 167—Civil Procedure Code (Act V of 1908), s. 98. Per JENKINS C.J. and N. R. CHATTERJEE J. (MULLICK J. dissenting). The interest of an unregistered purchaser of a portion of a patni tenure is not an "incumbrance" within the meaning of s. 161 of the Bengal Tenancy Act. *Chundra Sakai v. Kalli Prosunno Chuckerbutty*, I. L. R. 23 Calc. 254, distinguished. A purchaser of a tenure at a sale held in execution of a rent decree is not therefore required to annul such an interest (i.e., of an unregistered purchaser of a portion of a patni) under the provisions of s. 167 in order to get a clear title. *ABDUL RAHMAN CHOWDHURI v. AHMADAR RAHMAN* (1915). I. L. R. 43 Calc. 558

INDIAN COMPANIES ACT.

See COMPANIES ACT.

INFANCY.

See EVIDENCE. L. R. 43 I. A. 256

INHERITANCE.

- See ALIYASANTANA LAW
I. L. R. 39 Mad. 12
- See HINDU LAW—INHERITANCE.
- See HINDU LAW—STRIDHAY
I. L. R. 43 Calc. 64

INJUNCTION.

- See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 I. L. R. 40 Bom. 88
- See HINDU LAW—MARRIAGE.
I. L. R. 38 All. 520
- See PENAL CODE (ACT XLV OF 1860), s. 188 I. L. R. 39 Mad. 543
- See TEMPORARY INJUNCTION
interlocutory, disobedience of—
See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, r. 1 (r) AND O. XXXIX, r. 2, cl. (3)
I. L. R. 39 Mad. 907
- relief by—
See NUISANCE.
I. L. R. 40 Bom. 401

INQUIRY.

- delegation of—
See SECRET I. L. R. 43 Calc. 1024

INSOLVENCY.

- See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss. 6, 8, 25, 38, 39 (2), (a), (b), (c), (d), (f), (g)
I. L. R. 40 Bom. 461
- See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 37 I. L. R. 28 All. 37

1. ——— Minor—Infant, whether can be adjudicated an insolvent—An infant cannot be adjudicated an insolvent under any circumstances. *Ex parte James*, L. R. 15 Ch D 109, followed. *SITAL PRASAD AND OTHERS, Re* (1916) I. L. R. 43 Calc. 1157

2. ——— Security for Costs—Appeal—Jurisdiction—Presidency Towns Insolvency Act (III of 1909), s. 3 (2) (b), Civil Procedure Code (I of 1908), ss. 117, 151 and O. XLI, r. 10—Practice. On an application to the Court of Appeal for security for costs in an appeal from an order of

insolvency Act. *Setha Ayyar v Nagarathna Lala*, I. L. R. 27 Mad. 221, not followed. *LAKSHMINA DASI v. RAJESHWARI DASI* (1915).

I. L. R. 43 Calc. 243

3. ——— Proceedings in Insolvency—Application to a wrong Court—Limitation Act (IX of 1908), s. 14, inapplicability of, to insolvency proceedings—Appeal, notice of, only to interested parties. S. 14 of the Limitation Act does not apply to proceedings under the Provincial Insolvency Act. Hence an application filed in a wrong

INSOLVENCY—concl'd

Court to declare a debtor an insolvent and re-presented to a right Court can be said to be presented only on the date of its re-presentation and if on

of re-presentation, it is liable to be rejected. In an appeal by a creditor in insolvency proceedings it is sufficient if notice is given of the appeal only to the parties directly affected by the order of the lower Court, and not to all creditors who may have any remote or possible interest in the result of the appeal. *TRASI DEVA RAO v. PARAMESHWARAI* (1914) I. L. R. 39 Mad. 74

INSTALMENTS.

- payment by—
See DEKKHAY AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 15 B.
I. L. R. 40 Bom. 492

INSTRUMENT OF GAMING.

- See BOMBAY PREVENTION OF GAMBLING ACT (BOM IV OF 1887), s. 3
I. L. R. 40 Bom. 263

INSTRUMENT OF TITLE.

- See RAILWAY RECEIPT
I. L. R. 40 Bom. 630

INSURANCE.

- See SALE OF GOODS.
I. L. R. 40 Bom. 11

INTENTION.

- See FRAUDULENT PREFERENCE.
I. L. R. 43 Calc. 640
- See PENAL CODE (ACT XLV OF 1860), s. 450 I. L. R. 39 All. 517
- See SECURITY TO KEEP THE PEACE.
I. L. R. 43 Calc. 671

- evidence of—
See FORGERY I. L. R. 43 Calc. 783
- necessity of—
See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 591
- of writer—
See PRESS ACT (I OF 1910), ss. 3 (J), 4 (J), 17, 19, 20 AND 22.
I. L. R. 39 Mad. 1035

INTENTION OF FOUNDER.

- See MAHOMEDAN LAW—ENDOWMENT
I. L. R. 43 Calc. 1085

INTEREST.

- See DEMONSTRATIVE LEGACY
I. L. R. 43 Calc. 201
- See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1904), s. 3 AND 10, cl. (2).
I. L. R. 39 Mad. 930

INTEREST—conclld.

See MAHOMEDAN LAW—DOWER.

I. L. R. 38 All. 581

See WILL.

I. L. R. 43 Calc. 201

Power of Court to grant relief, where interest unconscionable—Creditor, when his improper act or omission delays payment of debt. Where delay in the payment of the principal debt is caused by some improper act or omission of the creditors, the accrual of interest will be suspended during such period as the debtor is so prevented. *Edwards v. Warden*, 1 App. Cas. 281, *Merry v. Ryves*, 1 Eden. 1, *Marlborough v. Strong*, 4 Brown P. C. 539, *Cameron v. Smith*, 2 B. & Ald. 305, *Bann v. Dalzel*, Moo. & M. 228, *Anderton v. Arrowsmith*, 2 P. & D. 408, *Laing v. Stone*, 2 Man & Ry. 561; *Moo. & M. 229*, *London, Chatham and Dover Railway Company v. South-Eastern Railway*, [1891] 1 Ch. 120, and *Webster v. British Empire Mutual Life Assurance Co.*, 15 Ch. D. 169, referred to. A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character, that is, so unconscionable and extravagant that no Court should allow it. *Khagaram Das v. Ramsankar Das*, I. L. R. 42 Calc. 652, *Abdul Majeed v. Khirode Chandra Pal*, I. L. R. 42 Calc. 690, *Bouwang v. Banga Behari Sen*, 22 C. L. J. 311; 20 C. W. N. 408, referred to. *GOPESHWAR SAHA v. JADAV CHANDRA CHANDA* (1915). I. L. R. 43 Calc. 632

INTERFERENCE.

by High Court—

See PRACTICE. I. L. R. 40 Bom. 220

INTERNATIONAL LAW.

See JURISDICTION.

I. L. R. 39 Mad. 661

INTERNMENT.

object of—

See ALIEN ENEMY, SUIT AGAINST.

I. L. R. 43 Calc. 1140

INTERPRETATION.

principle of—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182. I. L. R. 39 Mad. 923

INTERROGATORIES.

Method of administration—Disclosure of assets by affidavit in probate proceedings, how obtained—Civil Procedure Code (Act V of 1908), O. XI, r. 2.—Probate and Administration Act (V of 1881), s. 55. O. XI of the present Code of Civil Procedure applies to proceedings in probate (vide section 55 of the Probate and Administration Act). Under that Order there are only two methods of discovery, one by interrogatories and the other by an order directing discovery of documents in the possession or power of the other side. An affidavit of assets actually received can, therefore, be obtained in probate proceedings by interrogatories only. Under r. 2 of O. XI, in India as in

INTERROGATORIES—conclld.

England, the Judge has not any power to settle interrogatories, but he can only decide what should be administered. The dicta in English cases with regard to the more extensive powers of Courts in matters of probate, seem to imply that the strictest relevancy may not be required in interrogatories therein. *ANILABALA DAS v. RAJENDRANATH DALAL* (1915). I. L. R. 43 Calc. 300

INVESTIGATION.

See VALUATION OF SUIT.

I. L. R. 43 Calc. 225

IRREGULARITY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898). ss. 439, 422, 423.

I. L. R. 39 Mad. 505

ISTEMRARI MOKARARI.

See LEASE.

I. L. R. 43 Calc. 332

J**JAIL REGISTER.**

extract from—

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 1128

JAJNAVALKYA.

Ch. II, Vers. 117, 145—

See HINDU LAW—STRIDHAN.

I. L. R. 43 Calc. 944

JOINDER OF CASES.

1. ———— *Offences against different persons by the same accused—Legality of joint trial—Criminal Procedure Code (Act V of 1898) s. 234—Practice.* S. 234 of the Criminal Procedure Code is not limited to the case of offences committed against the same person, but applies also where they are committed against different persons. *Manu Miya v. Empress*, I. L. R. 9 Calc. 371, and *Sri Bhagwan Singh v. Emperor*, 13 C. W. N. 507, followed. *Empress v. Murari*, I. L. R. 4 All. 147, *Nanda Kumar Sircar v. Emperor*, 11 C. W. N. 1128, *Ali Mahomed v. Emperor*, 13 C. W. N. 418, dissented from. *Queen-Empress v. Juala Prasad*, I. L. R. 7 All. 174, referred to. At the same time the powers under the section should be used with great care and caution where there are different complainants. *SUBEDAR AHIR v. EMPEROR* (1915). I. L. R. 43 Calc. 13

2. ———— *Offences of the same kind committed in respect of different persons—Legality of joint trial—Criminal Procedure Code, ss. 234 and 239—Practice.* The words "offences of the same kind" used in s. 234 of the Code of Criminal Procedure, and as defined by sub-el. (2) of the said section, do not imply that the offences should necessarily have been committed against the same person. Where, therefore, there were six

JOINDER OF CASES—*conold*

persons accused of having been jointly concerned in carrying on a systematic swindle, and three joint charges were framed against all the accused. Held, there was nothing illegal in the procedure. *Sutedar Ahir v Emperor*, 1 L R 43 Calc 13, followed. *Empress v Murari*, 1 L R 4 All 147, dissented from. *EMPEROR v BECHAN PANDE* (1910) 1 L L R. 38 All. 457

JOINT BOND.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 402 1 L L R. 39 Mad. 409

JOINT DEBTORS.

— suit for contribution between—

See LIMITATION 1 L L R. 39 Mad. 268

JOINT ESTATE.

Primals partition—Encumbrance by co-sharer—Holding in severalty—Tenancy in common—Partition by Collector, effect of—Estates Partition Act (Beng Act V of 1897, s 99, and Beng Act VIII of 1876, s 128)—Practice

Amanaddi Patni v Nabin Chandra Gope, 11 C L J 95, *Syed Abdul Latif v Amanaddi Patwari*, 13 C W N 426, followed. *Jay Santari Gupta v Bharat Chandra Bardhan*, 1 L R 26 Calc 434, distinguished. Where a section of an Act (here, s 128 of Beng Act VIII of 1870) which was received a judicial construction (*Hindoo Nath v Mohobut Nissa*) is re-enacted in the same words such re-enactment (here, s 99 of Beng Act V of 1897)

beheld by any co-sharer, is allotted to another co-sharer, the latter takes it free from the encumbrance so created. *Bygnath v Ramwooden*, 1 L R 11 A 106, followed. The decision in *Sheikh Ahmedoolah v Sheikh Ashraf Hossain*, 13 L R 417, [where the lands were held in severalty] which was followed in *Hindoo Nath v Mohobut Nissa*, 1 L R 26 Calc 255, is not, as is assumed in *Jay Santari Gupta v Bharat Chandra Bardhan*, 1 L R 26 Calc 434, inconsistent with, and has not consequently been overruled in effect by the decision of the Judicial Committee in *Bygnath v Ramwooden*, 1 L R 11 A 106, [where the lands were held in common in tenancy]. *Bygnath v Ramwooden*, 1 L R 11 A 106, *Venkatarama v Purna*, 1 L R 33 Mad 49, *Sheikh Nura v Bakhtulnath Roy*, 21 C L J 525, *Burjo Nath Saha v Dinesh Chandra Neogi*, 21 C L J 529, *Tarikata v Ishur Chandra*, 21 C L J 603, *Jay Santari Gupta v Bharat Chandra Bardhan*, 1 L R 26 Calc 434, distinguished as cases where land was held in common tenancy. A plaintiff cannot be allowed to abandon

JOINT ESTATE—*conold*

his own case, adopt that of the defendant and claim relief on that footing. *Shibbirao Sircar v Abdul Hakeem*, 1 L R 5 Calc 692 *Rimloyd v Jannameny*, 1 L R 14 Calc 791, *Bhinnuk and Kesardas v Bhagwandas Kesardas*, 1 Bom L R 209, followed. But that does not prevent the defendant from contending that even on the facts found the plaintiff's claim (here, for ejectment) cannot be sustained. *NAJENDRA MOHAN ROY v PYARI MOHAN SAHA* (1915) 1 L L R. 43 Calc 103

JOINT FAMILY.

See HINDU LAW—JOINT FAMILY

See HINDU LAW—PARTITION

1 L L R. 43 Calc. 459

See JOINT HINDU FAMILY.

JOINT-FAMILY PROPERTY.

See AGRA TENANCY ACT (II OF 1901), s. 22 1 L L R. 33 All. 325

See HINDU LAW—SUCCESSION

1 L L R. 39 Mad. 136

JOINT HINDU FAMILY

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 366, 371

1 L L R. 40 Bom. 248

See GUARDIAN ad litem.

1 L L R. 38 All. 315

See HINDU LAW—JOINT FAMILY PROPERTY

1 L L R. 38 All. 126

JOINT IMMOVEABLE PROPERTY.

— partition of—

See BENAMIDAR 1 L L R. 43 Calc. 501

JOINT JUDGMENT-DEBTORS

*Release of some—Liability of others—English law—Indian Contract Act (II of 1872) s 41—Rule of justice, equity and good conscience—Rule of English law, applicability of A release by a decree holder of some of the joint judgment-debtors from liability under the decree does not operate as a release of the other judgment-debtors from liability under the decree. The rule of English law should not be applied, in India as it is based on the substantive rule applicable to contractual joint debtors, which is different under s 41 of the Indian Contract Act, and is not in consonance with justice, equity and good conscience. Quare Whether the English law should be applied in cases arising within the original jurisdiction of the High Courts. *Chinnamanna and Gurunani v Sadasiva*, 1 L R 5 Mad 357, referred to. *MOOLCHAND & ALVAR CHETTY* (1915)*

1 L L R. 39 Mad. 548

JOINT-PROBATE.

See HINDU LAW—WILL.

1 L L R. 39 Mad. 365

INTEREST—conclld.

See MAHOMEDAN LAW—DOWER.

I. L. R. 38 All. 581

I. L. R. 43 Calc. 201

See WILL.

Power of Court to grant

relief, where interest unconscionable—Creditor, when his improper act or omission delays payment of debt. Where delay in the payment of the principal debt is caused by some improper act or omission of the creditors, the accrual of interest will be suspended during such period as the debtor is so prevented. *Edwards v. Warden*, 1 App. Cas. 281, *Merry v. Ryves*, 1 Eden. 1, *Marlborough v. Strong*, 4 Bann P. C. 539, *Cameron v. Smith*, 2 B. & Ald. 305, *Bann v. Dalzel*, Moo. & M. 228, *Anderton v. Arrowsmith*, 2 P. & D. 408, *Laing v. Stone*, 2 Man & Ry. 561; *Moo. & M. 229*, *London, Chatham and Dover Railway Company v. South-Eastern Railway*, [1891] 1 Ch. 120, and *Webster v. British Empire Mutual Life Assurance Co.*, 15 Ch. D. 169, referred to. A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character, that is, so unconscionable and extravagant that no Court should allow it. *Khagaram Das v. Ramsankar Das*, I. L. R. 42 Calc. 652. *Abdul Majeed v. Khirode Chandra Pal*, I. L. R. 42 Calc. 690, *Bouwang v. Banga Behari Sen*, 22 C. L. J. 311; 20 C. W. N. 408, referred to. *GOPESHWAR SAHA v. JADAV CHANDRA CHANDA* I. L. R. 43 Calc. 632

INTERROGATORIES—conclld.

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I. L. R. 43 Calc. 225

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See CRIMINAL PROCEDURE CODE (ACT V OF 1898). ss. 439, 422, 423.

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JOINDER OF CASES—*conold*

persons accused of having been jointly concerned in carrying on a systematic swindle, and three joint charges were framed against all the accused. Held, there was nothing illegal in the procedure. *Subedar Ishir v Emperor*, 1 L R 43 Cal. 13, followed. *Empress v Murari*, 1 L R 4 All 117, dissented from. *EMPEROR v BECHAN PANDU* (1916) 1 L R. 38 All. 457

JOINT BOND.

See CIVIL PROCEDURE CODE (ACT XIV of 1882), s. 462 1 L R. 39 Mad. 409

JOINT DEBTORS

suit for contribution between—

See LIMITATION 1 L R. 39 Mad. 298

JOINT ESTATE.

Private partition—Encumbrance by co-shares—Holding in severalty—Tenancy in common—Partition by Collector, effect of—Estates Partition Acts (Beng. Act V of 1897, s. 39, and Beng. Act VIII of 1876, s. 128)—Practice—Abandonment of plaintiff's case and adoption by him of defendant's 89 of Beng. Act V of 1897 applies only where the lands are held jointly by the

15 C H A 426, followed. *Joy Sanjari Gupta v Bharat Chandra Bardhan*, 1 L R 26 Cal. 431, distinguished. Where a section of an Act (here, s. 128 of Beng. Act VIII of 1876) which was received a judicial construction (*Hriday Nath v Mohobut*

an undivided joint estate, which had been encumbered by any co-sharer, is allotted to another co-sharer, the latter takes it free from the encumbrance so created. *Dygnath v Ramooddeen*, 1 L R 11 4 106, followed. The decision in *Sheikh Ahmedullah v Sheikh Ashraf Hossain*, 13 W R d 417, [where the lands were held in severalty] which was followed in *Hriday Nath v Mohobut* 1 L R 26 Cal. 255, is not, as is assumed in *Proc. Sanjari Gupta v Bharat Chandra* 1 L R. 212—1 L R. 26 Cal. 431, inconsistent with 11, 13 not consequently been overruled in the present decision of the Judicial Committee. Suit in a Court. *Ramooddeen*, 1 L R 11 4 106 [i.e., on, he may be held in common tenancy] Bred his claim to, the 1 L R 11 4 106 [i.e., that Court can enter 33 Mad. 429. *Sheikh Nurch* a case if the plaintiff 21 C L J 308, *Projo* and a claim in excess of the 21 C L J 302, it, he may be justly required 21 C L J 603, because he had with his eyes *Chandra Bardhan* a suit deliberately in a Court of quished as case any jurisdiction. *Gudap Singh v tenancy A. Hara*, 13 C H A 433, 2 C L J

JOINT ESTATE—*conold*

his own case, adopt that of the defendant and claim relief on that footing. *Shikri v Sircar v Abdul Hakeem*, 1 L R 5 Cal. 602. *Rindoyal v Janyany*, 1 L R 14 Cal. 791. *Bismukund Kesaria v Bhargunda Kesaria* 1, Bom L R 209, followed. But that does not prevent the defendant from contending that even on the facts found the plaintiff's claim [here, for ejectment] cannot be sustained. *NAGESDRA MOHAN ROY v PRAT MOHAN SANA* (1915) 1 L R. 43 Cal. 103

JOINT FAMILY

See HINDU LAW—JOINT FAMILY

See HINDU LAW—PARTITION

1 L R. 43 Cal. 459

See JOINT HINDU FAMILY

JOINT-FAMILY PROPERTY

See AGRA TENANCY ACT (II OF 1901), s. 22 1 L R. 38 All. 325

See HINDU LAW—SUCCESSION

1 L R. 39 Mad. 136

JOINT HINDU FAMILY

See CIVIL PROCEDURE CODE (ACT XIV of 1882), ss. 366, 371

1 L R. 40 Bom. 245

See CLAUDIAN ad item.

1 L R. 38 All. 315

See HINDU LAW—JOINT FAMILY PROPERTY clear language in *Umar Sultan* 351, dissented from *Per SADA*

JOINT IMMOVABLE

Objection to jurisdiction is

as that there was no voluntary suit

by the defendant to the jurisdiction of the

Seary & Co v Appasani Pillai, 1 L R

17, approved. *Seetraghata Iyer v Muga*

JOINT F L R 39 Mad. 24, referred to. *NARAYANA*

HAD THE COCHIN SIRCAR (1915)

1 L R. 39 Mad. 661

JURISDICTION AND CLAIM.

deal of—

See FOREIGN DECREE, EXECUTION OF

1 L R. 39 Mad. 24

JURISDICTION OF CIVIL COURT

See AGRI SETTLEMENT REGULATION (VII

OF 1900), s. 13.

1 L R. 40 Bom. 446

See EX PARTE DECREE

1 L R. 39 Mad. 583

See RIGHT OF SUIT

1 L R. 40 Bom. 203

JURISDICTION OF DISTRICT COURT.

See CLAUDIAN AND WARDS ACT (VIII OF 1900), ss. 12, 13, 17, 19, 24, 25.

1 L R. 40 Bom. 600

JURISDICTION OF HIGH COURT.

See HINDU, SUIT ON

1 L R. 40 Bom. 473

JURISDICTION OF MAGISTRATE.*See* FALSE INFORMATION.

I. L. R. 43 Calc. 173

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 153

JURY.

——— charge to—misdirection—

See PRACTICE. I. L. R. 40 Bom. 220

*Misdirection to—Confession before village salish—Evidence Act (I of 1872), s. 24—Person in authority—Indian Penal Code (Act XLV of 1860), ss. 302/115, 328/116—Abetment of murder by poisoning and causing hurt by means of poison—Absence of evidence as to amount of poison proposed to be administered. The accused was charged under ss. 302/115, and 328/116, Indian Penal Code, the case for the prosecution being that the accused suspecting an intrigue between her husband and a certain woman gave a powder to a girl with instructions to give it to the woman. Owing to the intervention of a relative of the girl the powder was not given to the woman. The accused asked the girl to give her back the powder and the girl returned a portion of it. On the matter getting about in the village a salish was summoned before whom the accused made a confession and produced the powder. The chemical analyser's report was that traces of white arsenic were found in the powder but it was not disclosed how much arsenic was there. It was found that the president and members of the salish told the accused that if she confessed they would compromise the matter. The Sessions Judge in charging the jury said that the confession was not inadmissible because the members of the salish were not persons in authority and the accused was not then charged with any offence. Held, that the Sessions Judge misdirected the jury in the matter of the confession. The president of a panchayet may be a person in authority within the meaning of s. 24 of the Evidence Act, and to tell the jury that he was not, was clearly erroneous, the matter depending on a question of fact, viz., whether the confession was caused by any inducement, threat or promise, having reference to the charge against the accused. *Nazir Jharudar v. The Emperor*, 9 C. W. N. 474, and *the Emperor v. Jasha Bewa*, 11 C. W. N. 904, referred to. That the salish being summoned to consider the case which was being made against the accused, she was before the salish on that charge and the Sessions Judge was wrong in directing otherwise. That having regard to the inducement offered by the president and members of the Salish to the accused it is extremely doubtful whether the confession should have been allowed to be placed before the jury at all. It certainly ought not to have been placed before them without an explanation as to how they should value it having regard to the circumstances in which it was made. That the chemical analysis not disclosing how much arsenic was found in the powder, there was no evidence on the record against the accused as to the amount of poison which was*

JURY—concl'd.

proposed to be administered and it was doubtful whether the case would come under s. 302 or s. 328, Indian Penal Code. *KING-EMPEROR v. AUSHE BIBI* (1915). 20 C. W. N. 512

JUSTICE, EQUITY AND GOOD CONSCIENCE

——— rule of—

See JOINT JUDGMENT-DEBTORS.

I. L. R. 39 Mad. 548

JUSTICE OF THE PEACE.*See* EUROPEAN BRITISH SUBJECT.

I. L. R. 39 Mad. 942

JUSTIFICATION.*See* TORT.

I. L. R. 39 Mad. 433

K**KARNAVAN.***See* MALABAR TARWAD.

I. L. R. 39 Mad. 918

KARTA.*See* HINDU LAW—PARTITION.

I. L. R. 43 Calc. 459

KAZI.

——— discretion of—

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 43 Calc. 1085

KHANDESH DISTRICT.*See* PRE-EMPTION.

I. L. R. 40 Bom. 358

KHOTI SETTLEMENT ACT (BOM. I OF 1880)..

——— s. 9—

See RES JUDICATA.

I. L. R. 40 Bom. 675

KIDNAPPING.

See PENAL CODE (ACT XLV OF 1860), ss. 361, 366, 109. I. L. R. 38 All. 664

KUDIVARAM RIGHT.

——— ownership of—

See CIVIL COURTS.

I. L. R. 39 Mad. 21

L**LABOURER.**

——— prosecution of—

See MADRAS PLANTERS' LABOUR ACT (MAD. I OF 1903), ss. 24, 35.

I. L. R. 39 Mad. 883

LAKHERAJ.*See* ASSESSMENT.

I. L. R. 43 Calc. 973

LAMBARDAR.

— suit against, for profits—

See AGRA TENANCY ACT (II OF 1901),
s. 161 . I. L. R. 39 All. 223

LAND.

— agreement to sell, not creating any
Interest therein—

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 54. I. L. R. 39 Mad. 462

— sale of—

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 55 (4)
I. L. R. 39 Mad. 997

LAND ACQUISITION.

See LAND ACQUISITION ACT, 1894

1. — Godowns used as
servants' residence, whether part of house or building
— acquisition of such godown alone, legality of—Land
Acquisition Act (I of 1894), ss 49 (1), 54—Practice—
Appeal. Godowns necessary as residence for ser-
vants are part and parcel of a building (within the
meaning of s. 49 (1) of the Land Acquisition Act)
being a most important part of that building for
the purpose of letting it out to gentlemen as a
place of residence. The acquisition of such go-
downs would thus be an acquisition of a part of a
house contrary to the provisions of the Act. It
has never been doubted that an appeal would be
in the case of such an order under that section
Hasan Mulla v Tahiruddin, I L R 39 Cal. 293,
distinguished. DALCHAND SINGH v THE SECRET-
ARY OF STATE FOR INDIA (1916)

I. L. R. 43 Cal. 665

2. — Court, if may deter-
mine question of title—Claims to compensation by
Zamindar as against person holding under a *lakhraji*
title—Onus of proof. A purchaser of an entire
estate sold for arrears of revenue suing to recover
land claimed by the defendant as *lakhraji* must
prove a *prima facie* case that his mal land has,
since 1700, been converted into *lakhraji*. The fact
that the lands are within the ambit of the estate
is not sufficient to meet this burden. Whether in
a particular case, the plaintiff has been able to
prove such a *prima facie* case would depend upon
its own circumstances. Where the question of
title to a plot of land arises between claimants to
compensation money paid by Government on ac-
quisition thereof under the Land Acquisition Act,
one being the purchaser of the estate at a sale for
arrears of land revenue, whilst the other was hold-
ing it as *lakhraji*: *Held*, that the former was in
the position of the plaintiff and the burden of

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rival claimants. KRISHNA KALYANI DAS v. R.
BRALWELD (1915). 20 C. W. N. 1023

3. — Land Acquisition
by Government—Right to compensation—Possession

LAND ACQUISITION—concl.

for 12 years by non payment of rent—Title by adverse
possession. On the acquisition of a piece of land
under the Land Acquisition Act it was found that
the person in possession had taken possession of it
on the death of the last male owner and held
possession for more than 12 years without payment
of rent. He asserted that he held the land under
another person and not under the rival claimant
who was the reversionary heir of the last male
owner. *Held*, that the person in such possession
was entitled to the full compensation paid for its
compulsory acquisition, having acquired the right
to hold the land rent free by twelve years' adverse
possession. RAJBANS SARKAR v. HAR MAHABIR
PRASAD (1916) 20 C. W. N. 823

LAND ACQUISITION ACT (I OF 1894).

See MADRAS ESTATES LAND ACT (I OF
1908), s. 6, SUB S. (6) AND S. 8.
I. L. R. 39 Mad. 944

See RAILWAY. I. L. R. 43 I. A. 310

s. 30—

Reference to Civil Court
if lies after payment of compensation to one party
by Collector—Order by Civil Court directing Govern-
ment to pay compensation to party found entitled to
it and to realise the amount wrongly paid from the
other party, propriety of—Facts to be proved by

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LAND ACQUISITION ACT (I OF 1894)—concl'd.**s. 30—concl'd.**

with interest at 6 per cent. per annum from the date of withdrawal. *Held*, further, that a claimant in a Land Acquisition proceeding can get no share of the compensation without establishing either title to or possession of the land acquired. *SATISH CHANDRA SINGHA v. ANANDA GOPAL DAS* (1916).

20 C. W. N. 816

s. 32—Bhagdari and Narvadari Act (Bom. Act V of 1862), s. 3—Unrecognised sub-division of a narva holding—Compulsory acquisition. The provisions of s. 32 of the Land Acquisition Act (I of 1894) cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub-division of a narva holding. *Per* BATCHELOR, J. "The only case contemplated by the draughtsman (in s. 32 of the Land Acquisition Act, 1894) was the case where the legal estate was in a person possessing only a limited interest, while outstanding rights were in a beneficiary or revisioner who, upon the exhaustion of the limited estate, would become, in the words of the clause, 'absolutely entitled' to the land." *ASSISTANT COLLECTOR OF KAIRA v. VIJHALDAS* (1915).

I. L. R. 40 Bom. 254

ss. 49 (1), 54—

See LAND ACQUISITION.

I. L. R. 43 Calc. 665

s. 53—

See RECORDS, POWER TO CALL FOR.

I. L. R. 43 Calc. 239

LANDHOLDER.

See MADRAS ESTATES LAND ACT (MAD. I OF 1908) I. L. R. 39 Mad. 1018

LAND IMPROVEMENT LOANS ACT (XIX OF 1883).**s. 7—**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

LANDLORD AND TENANT.

	COL.
1. AGRICULTURAL LEASE	227
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See EVIDENCE ACT (I OF 1872), s. 16.

I. L. R. 38 All. 226

1. AGRICULTURAL LEASE.

Agricultural lease—Days of grace for payment of rent—Forfeiture clause for non-payment of rent after days of grace—Relief against forfeiture. Courts in India have power to relieve against forfeiture for non-payment of rent

LANDLORD AND TENANT—concl'd.**1. AGRICULTURAL LEASE—concl'd.**

even in cases where a period of grace is allowed for payment by the lease deed; and this rule applies equally to a lease (as in this case) for agricultural purposes. Whether relief against forfeiture should in any particular case be given depends on the facts of that case. *Per* SESHAGIRI AYYAR J.—It is open to Courts to look at legislative provisions regarding the liability of other lessees and tenants as embodying the principles of justice, equity and good conscience. *Per* NAPIER J.—When the statute specifically excludes one transaction of the same class as that which is being dealt with from its purview, the doctrine cannot be applied. The Transfer of Property Act cannot be looked to for guidance in the matter of an agricultural lease. *APPAYYA SHETTY v. MAHAMMAD BEARI* (1915). I. L. R. 39 Mad. 834

2. EJECTMENT.

Suit for—Lease of land for residential purposes—Law before the Transfer of Property Act (IV of 1882)—Onus to prove transferability—Presumption of transferability, if arises from long continued possession. The effect of the recent decisions is that when a landlord sues a person on the allegation that he is a trespasser and that person sets up a transfer from a tenant, it is for the latter to prove, first of all, the tenancy and, secondly, the validity of the transfer. With regard to tenancies of homestead land created before the Transfer of Property Act, the tendency of these decisions has been to establish that in the absence of evidence to the contrary, the burden of proof being upon the tenant, these tenancies are non-transferable. *Benue Madhub v. Joykissen*, 12 W. R. 495, and *Durga Pershad Misser v. Bindaban Sookul*, 15 W. R. 274, referred to and doubted. The only exception made to the above rule is when there has been an erection of pucca buildings or a standing by on the part of the landlord while the tenant spends a large sum upon the land. *Madhu Sudan Sen v. Kamini Kanta Sen*, I. L. R. 32 Calc. 1023 : s. o. 9 C. W. N. 895, and *Nabu Mandal v. Cholim Mullik*, I. L. R. 25 Calc. 896 : s. c. 2 C. W. N. 405, relied on. Mere long continued possession cannot give rise to a presumption of transferability. *AMBICA PROSAD SINGH v. BALDEOLAL* (1916).

20 C. W. N. 1113

3. INTEREST.

Kabuliyat containing stipulation to pay excessive rate of interest—Assurance by landlord at the time of execution of kabuliyat that covenant will not be enforced, effect of, on the document—Evidence Act (I of 1872), s. 92, prov. 1. A kabuliyat for a period of one year provided that on default of payment of rent the arrears would carry interest at 75 per cent. per annum. The tenant held over after one year. On a suit for rent on the basis of the kabuliyat the tenant pleaded that before the kabuliyat was executed by him,

LANDLORD AND TENANT—*contd*3 INTEREST—*contd*

the landlord assured him that the covenant for payment of interest at 75 per cent. would not be enforced. This allegation was found to be true. *Held*, that under the circumstances the *labuhyat* was not the real agreement between the parties, having been induced by fraudulent misrepresentation, and the tenant was not liable to pay interest claimed on the basis of the *labuhyat*. S 92, Prov 1 of the Evidence Act referred to. *NADIA CHAUD SAHA v BIRENDRA CHANDRA DUTT* (1915)

20 C W. N. 1067

4 OCCUPANCY RIGHT

Interest by occupancy
raiyat—Notice to quit—Ejectment—Bengal Tenancy Act I of 1886
The raiyat of a mortgage of land in possession.
Subsequently the mortgagee settled the lands with under raiyat. The superior landlord then brought

Alhil Chandra Biswas v Hasan Ali Sadagar 19 C W N 246, followed. *Held*, also, that the landlord was able to transfer the holding to Mejan, through whom it came to the plaintiffs. *Held*, also, that the under raiyat continued to be under raiyat and were duly served with notice to quit and must be ejected. *YAKUB ALI v MEJAN* (1915). I L R. 43 Calc 162

5 RENT

Suit for rent—Non occupancy raiyat—Term for a term—Suspension of portion of rent during the term—Stipulation for payment of rent at full rate after expiry of term—Agreement, if invalid—Increase of rent at reduced rate after expiry of the term, if deprives landlord of his right to claim rent at the stipulated rate—Waiver—Intention of parties. Where in a *labuhyat* for a term executed by a non-occupancy raiyat a certain rent was settled out of which a portion was kept in suspension and the balance was stated to be the rent payable for the term, and it was further stipulated that if after expiry of the term the raiyat continued in occupation without taking a fresh settlement he would be liable to pay rent at the full rate, and after the expiry of the term the raiyat remained in occupation without taking a fresh settlement and rent was then realised from the tenant at the reduced rate for a few years and thereupon the landlord sued, for rent at the full

LANDLORD AND TENANT—*contd*7 RENT—*contd*

rate. *Held*, that the agreement did not contravene the provisions relating to non-occupancy raiyat and was not invalid. *Held*, also, that the landlord by accepting rent at the reduced rate was not deprived of his right to claim rent at the rate stipulated in the *labuhyat* and was entitled to receive rent at the full rate. *Durga Prasad Singh v Rajendra Narayan Bajpai*, I L R. 41 Calc 493 s.c. 18 C W N 66, and *Bajrath Prasad v Bhagunath Ray*, 16 C W N 496, followed. *Held*, further, that evidence that since the execution of the *labuhyat* the tenant paid rent at a lower rate than that stated in the *labuhyat* was admissible to show the intention of the parties that the *labuhyat* was not intended to be acted upon or that there had been a waiver of the terms of the lease. *Bani Madhab Gorani v Lalmit Das*, 6 C W N 242, followed. *KAILASH CHANDRA SAHA v DARBARIA SHYAM* (1915) 20 C W. N. 347

6. TRANSFER

Landlord—Transfer voidable of—Non payment of rent by tenant—Disclaimer—Suit by landlord for khas possession of the transferred portion. The holder of a non transferable occupancy holding has no power to create by transfer a title good against his landlord. Where a tenant transferred by a deed of sale a portion of his non transferable occupancy holding without his landlord's knowledge or consent and subsequently refused to pay the rent of the transferred portion to the landlords on the ground that it was sold and relinquished in favour of the purchaser, paying rent only for the portion of the holding which remained in his possession, and where such apportionment of the rent was accepted by the landlords. *Held*, that such an act on the part of the tenant amounted to a disclaimer to all right, title and interest to the

I L R. 43 Calc. 873

LAND REVENUE CODE (BOM. ACT V OF 1879).

ss. 56, 153—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII of 1879).

I L R. 40 Bom. 453

LAWFUL APPREHENSION.

—resistance to—

See RESISTANCE FROM LAWFUL OCCUPANT.

I L R. 43 Calc. 1161

LEASE.

See DEKKHĀN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 3, CL. (y) AND s. 10A. I. L. R. 40 Bom. 397

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 92, 93. I. L. R. 40 Bom. 22

See MINING LEASE.

See PERMANENT LEASE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 105, 107.

I. L. R. 38 All. 178

by Mahomedan co-heirs—

See TENANTS-IN-COMMON.

I. L. R. 39 Mad. 1049

determined by one lessor—

See TENANTS-IN-COMMON.

I. L. R. 39 Mad. 1049

for a term—

See LESSOR AND LESSEE.

I. L. R. 39 Mad. 1042

for a term of years, construction of—

See CONSTRUCTION OF DEED.

I. L. R. 40 Bom. 74

"Istemrari mokarari," meaning of the expression, lexicographical and customary—Tenure, perpetuity of—What covenants and circumstances favour the theory of perpetuity—Meaning of words in a document, whether a question of fact or law—Rights of parties to a contract how governed. The expression "istemrari mokarari" does not *per se* convey, either lexicographically or by way of custom, an estate of inheritance; but an *istemrari mokarari patta*, notwithstanding the absence of words indicative of heritability, such as *ba farzandan*, *naslan bad naslan* or *al-aulad*, may indicate a perpetual grant, if the other terms of the instrument, the circumstances under which it was made or the subsequent conduct of the parties, show such an intention with sufficient certainty. Clauses in a lease which impose a restraint on transfer or cutting down of fruit-bearing or income-yielding trees by the lessee are not consistent with the theory of a perpetual lease. Clauses which throw the cost of improvement on the lessee indicate some measure of continuity, but not necessarily perpetuity. A lease in favour of two persons points to the conclusion that, though some measure of continuity was desired, perpetuity was not intended. A substantial premium for a lease is one of the surest indications of a permanent grant. *Tulshi Pershad Singh v. Ramnarain Singh*, I. L. R. 12 Calc. 117; I. R. 12 I. A. 205, analysed and followed. *Tulshinarain Sahu v. Baboo Modnarain Singh*, (1848) S. D. A. 752; 10 I. D. (O. S.) 532, *Amicroomissa Begum v. Hetnarain Singh*, (1853), S. D. A. 648, *The Government of Bengal v. Nawab Jafur Hossein*, 5 Moo. I. A. 467, *Sarobur Singh v. Raja Mohendranarain Singh*, (1860) S. D. A. 577, *Raja Lillanand Singh Bahadur v. Thakur Munorunjun Singh*, 13 B. L.

LEASE—concl'd.

R. 124; I. R. Sup. Vol. 181, *Sheo Pershad Singh v. Kally Dass Singh*, I. L. R. 5 Calc. 543, *Bilasmoni Dasi v. Raja Sheo Pershad Singh*, I. L. R. 8 Calc. 664; I. R. 9 I. A. 33, *Beni Pershad Kōeri v. Dudhnath Roy*, I. L. R. 27 Calc. 156; I. R. 26 I. A. 216, *Agin Bindh Upadhya v. Mohan Bikram Shah*, I. L. R. 30 Calc. 20, *Narsingh Dyal Schu v. Ram Narain Singa*, I. L. R. 30 Calc. 883, and *Choudhri Gridhari Singh v. Maharaj Ram Narain Singh*, 10 C. W. N. cclxxv, followed. *Munrunjun Singh v. Rajah Lelanund Singh* 3 W. R. 84, *Tekait Manora Singh v. Raja Lillanand Sing*, 2 B. L. R., A. C., 125n, *Rajah Leelanund Singh v. Thakoor Monoranjun Singh*, 5 W. R. 101, *Lakhu Kowar v. Roy Hari Krishna Singh*, 3 B. L. R., A. C., 226; 12 W. R. 3, and *Karunakar Mahati v. Niladhro Choudhry*, 5 B. L. R. 652; 14 W. R. 107, overruled. *Watson v. Mahesh Narain Roy*, 24 W. R. 176, referred to. The meaning of words in a document is a question of fact, though the effect of words is a question of law. *Chatenay v. Brazilian Submarine Telegraph Company*, [1891] 1 Q. B. 79, followed. The rights of parties to a contract are to be judged by that law by which they may justly be presumed to have bound themselves. *Lloyd v. Guibert*, 6 B. & S. 100; 122 E. R. 1134, and *Abdul Aziz Khan v. Appayasami Naicker*, I. L. R. 27 Mad. 131; I. R. 31 I. A. 1, followed. Where a lease is in favour of two persons and the lease would not terminate till the death of the survivor of the two lessees, no question of limitation can arise before the death of both the lessees. *Quare*: Whether the mode in which registration of a lease is effected is relevant to an enquiry as to the nature of the lease. *Najibulla Mulla v. Nusr Mistri*, I. L. R. 7 Calc. 196, *Jagatdhar Narain Prasad v. Brown*, I. L. R. 33 Calc. 1133, and *Indra Bibi v. Jain Sardar Ahiri*, I. L. R. 25 Calc. 845, *Sartaj Kuari v. Deoraj Kuari*, I. L. R. 10 All. 272, I. R. 15 I. A. 51, referred to. *RAM NARAIN SINGH v. CHOTA NAGPUR BANKING ASSOCIATION* (1915) I. L. R. 43 Calc. 332

LEAVE OF COURT.

See HUNDI, SUIT ON.

I. L. R. 40 Bom. 473

See PRESIDENCY TOWN INSOLVENCY ACT (III OF 1909), s. 17.

I. L. R. 40 Bom. 235

LEAVE TO APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 110. I. L. R. 40 Bom. 477

LEGAL INTEREST.

See DECLARATORY DECREE, SUIT FOR.

I. L. R. 43 Calc. 694

LEGAL NECESSITY.

See HINDU LAW—ALIENATION.

I. L. R. 43 Calc. 417, 574

LEGAL PRACTITIONER.

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), s. 14.

I. L. R. 38 All. 182

LEGAL PRACTITIONERS ACT (XVIII OF 1879),

ss. 13 (b) 14.

See UNPROFESSIONAL CONDUCT.

I. L. R. 43 Cal. 635

ss. 13, 14—

1. ————— *Specific charge under s. 13 (b), necessary—Taking instruction from unauthorised persons—Conduct improper.* In a reference under the Legal Practitioners Act, the High Court confines itself to the charge framed by the Primary Court. The finding that the pleader was guilty of the fraudulent or grossly improper conduct in the discharge of his professional duty within the meaning of s. 13 (b) of the Legal Practitioners Act was disregarded as the pleader was not charged with that. Where a pleader was found to have received instructions from a person about whom he made no enquiries as to his right to instruct him on behalf of certain persons or their mother and also that he filed a written statement which was not prepared by him and that he accepted the vakalatnama at the instance of another party in the suit and that he filed a receipt which on the face of it was not genuine without even examining it, it was held that his conduct was most improper, although no injury resulted from it. The pleader was suspended for nine months. *In the matter of Jugal Chandra Mazumdar* (1916) . 20 C. W. N. 1016

2. ————— *Mukhtar abusing Court's Officer if liable to disciplinary action—Contempt—Object of punishment—Subordinate Court, if may start enquiry under s. 14 in cases other than under cl. (a) and (b) to s. 13—High Court, if may adopt a report made by subordinate Court in a proceeding wrongly initiated but properly conducted.* S. 14 of the Legal Practitioners Act invests a Subordinate Court with authority to inquire into any case of misconduct alleged against a pleader or Mukhtar practising before it, covered by s. 13 of the Act as amended by Act XI of 1890, and not merely cases covered by cl. (a) and (b) of s. 13. *In the matter of Southend Krishna Rao*, L. R. 14 I. A. 154 & c. I. L. R. 15 Cal. 152, explained. *In re Parva Chandra Pal*, I. L. R. 27 Cal. 1023; & c. 4 C. W. N. 349, commented on. Whether an enquiry is made by or under the orders of the High Court under s. 13 or is instituted by the Subordinate Court of its own motion the final order can be passed only by the High Court. The law does not require an inquiry ordered under s. 13 to be conducted directly by the High Court. Therefore, even if it were incompetent for a Subordinate Court to initiate an inquiry into certain kinds of charges of misconduct, if such an inquiry has been properly held after notice there is nothing to prevent the High Court from adopting it as one which could be directed under s. 13. The Court, at least when in session, is present in every part

LEGAL PRACTITIONERS ACT (XVIII OF 1879;—contd.

s. 13—contd.

of the place set apart for its own use and for the use of its officers, jurors and witnesses, and disorderly conduct anywhere in such place amounts to a contempt of Court. The power of suspension or removal is distinct from the power to punish for contempt, but a contempt may be of such character as to warrant the exercise of the disciplinary powers of the Court. When the Court takes notice of a misconduct which consists in the obstruction of, or an interference with, one of its officers, the object of the discipline enforced is not so much to vindicate the dignity of the Court or the person of the officer, as to prevent undue interference with the administration of justice. Where a workman in the course of an altercation with the Court's accountant in the latter's office used abusive language which was heard by the Munsif from his Court. Held, that for such conduct the Court could take disciplinary action against the workman. *In the matter of Rasik Lal Nao* (1916) . 20 C. W. N. 1231

s. 14—

1. ————— *Legal practitioner—Prosecution ordered—Certificate not to be cancelled until result of prosecution is known—Practice.* Where a District Judge, having the alternative to take action against a pleader practising in his judgeship under s. 14 of the Legal Practitioners Act, 1879, or to initiate criminal proceedings against him, takes the latter, he ought to wait until the result of the criminal proceedings is known before refusing to renew the pleader's certificate. *In the matter of A PLEADER* (1916) . I. L. R. 33 All. 152

2. ————— *Gross contempt of a Subordinate Court by a second-grade pleader by unjustly attacking its impartiality in the discharge of its duties—Jurisdiction of Subordinate Court to take proceedings under s. 14 for all cases coming under s. 13, cl. (f), not *exclusio generis*.* In the course of an enquiry before a District Munsif, a second grade pleader who appeared for one of the parties to the enquiry swore an affidavit and filed the same in Court requesting that that Court should not proceed with the enquiry. The affidavit contained unjust aspersions, imputations and insinuations couched in insulting language charging the District Munsif with rancour and prejudice against the pleader and with a desire to injure him both as a pleader and also as a public man. The Munsif thereupon took these proceedings under s. 14 of the Legal Practitioners Act (XVIII of 1879) charging the pleader under s. 13, cl. (f) of the Act, with contempt of Court. Held, (i) that Subordinate Courts have jurisdiction to take proceedings not only under cl. (a) and (b) of s. 13, but also under all the other clauses of the section; (ii) that cl. (f) is not confined to misconduct *exclusio generis* as those referred to in the previous clauses; and (iii) that the pleader was guilty of misconduct by his outrageous attack upon the Court in the exercise of its functions. *Their Lordships*

LEGAL PRACTITIONERS ACT (XVIII OF 1879) —concl'd.

s. 14—concl'd.

ordingly suspended the pleader from practice a period of four months. The decision of ON J. in *In the matter of the Petition of Mahomed Abdul Hai*, I. L. R. 29 All. 61, and *In the matter of Pledader*, I. L. R., 26 Mad. 448, followed. THE TRIEST JUDGE, KISTNA v. HANUMANULU (1915).

I. L. R. 39 Mad. 1045

LEGAL REPRESENTATIVE.

Sec. CIVIL PROCEDURE CODE, (ACT V OF 1908), s. 2, CL. (121); O. XXII, R. 1.

I. L. R. 39 Mad. 382

of the receiver—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.

I. L. R. 39 Mad. 584

ATEE.

suit for maintenance against—

See HINDU LAW—MAINTENANCE.

I. L. R. 39 Mad. 396

ISLATION.

when retrospective—

See ASSESSMENT.

I. L. R. 43 Calc. 973

ITIMACY.

See MAHOMEDAN LAW—GIFT.

I. L. R. 38 All. 627

acknowledgment of—

See MAHOMEDAN LAW.—ACKNOWLEDGMENT OF SONSHIP.

I. L. R. 40 Bom. 28

SEE.

See MADRAS ESTATE LAND ACT.

I. L. R. 39 Mad. 1018

dispossession of—

See LESSOR AND LESSEE.

I. L. R. 39 Mad. 1042

SOR.

See TENANTS-IN-COMMON.

I. L. R. 39 Mad. 1049

SOR AND LESSEE.

Lease for a term—
possession of lessee, within term by trespassers—
of suit of lessor, for actual possession—Lessee
l as defendant—Decree—Declaration of title—
mal possession can be given. A lessor whose
is dispossessed by a stranger can maintain
t against the stranger during the term of the
and obtain a decree not only declaring his
to the reversion, but also awarding him
nal" possession of the land as provided by
XI, r. 36, Civil Procedure Code. *Bissessuri*
ra v. Baroda Kanta Roy Chowdry, I. L. R. 10
1076, and *Sita Ram v. Ram Lal*, I. L. R. 18
440, followed. *TIRUVENGADA KONAN v.*
ATACHALA KONAN (1915).

I. L. R. 39 Mad. 1042

LESSOR AND LESSEE—concl'd.

2. *Suit for rent—Unliquidated claim for damages which has become barred—Equitable set-off, whether available, if possession disturbed.* In a suit by the lessor for rent, it is not open to the lessee to set up by way of equitable set-off an unliquidated claim for damages which was barred at the date of the suit. English case law reviewed. *VYRAYAN CHETTY v. SRIMATH DEIVASHKAMANI NATARAJA DESIKAR* (1915).

I. L. R. 39 Mad. 939

LETTERS OF ADMINISTRATION.

See PROBATE. I. L. R. 40 Bom. 666

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s. 4. I. L. R. 38 All. 474

LETTER PATENT (24 & 25 VICT. C. 104).

cl. 15—

Appeal under—Order of a single Judge in revision against order to give security to keep the peace—No appeal—"Criminal trial," meaning of. Proceedings taken for binding over persons to keep the peace under chapter VIII, Criminal Procedure Code, are criminal trials within the meaning of s. 15 of the Letters Patent, and hence there is no appeal from the judgment of a single Judge disposing of a Revision Petition presented against an order of a Magistrate under s. 118 of the Code of Criminal Procedure, In *In the matter of Ramasamy Chetty*, I. L. R. 27 Mad. 510, followed. *Re Desikachari* (1915).

I. L. R. 39 Mad. 539

LETTERS PATENT, 1865.

cls. 10, 39—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 39 Mad. 128

cl. 12—

See HUNDI, SUIT ON.

I. L. R. 40 Bom. 473

cl. 15—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 435, 439 AND 133.

I. L. R. 39 Mad. 537

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 488.

I. L. R. 39 Mad. 472

1. *Appeal from judgment of Judge of High Court affirming that of lower Court and dissented from by his colleague—Appeal Court, if bound by findings on which differing judges agreed—"judgment," meaning of.* Where a Bench of two Judges of the High Court having differed as to the disposal of an appeal, the judgment of the lower Court was confirmed, on a further appeal under cl. 15 of the Letters Patent: *Held*, that the Appeal Court was not precluded from reviewing points on which the two Judges were agreed though due regard would be paid to the concurrent findings of the two Judges and of the trial Court. "Judgment" in cl. 15 of the Letters Patent means "the sentence of law pronounced by the Court"

LETTERS PATENT, 1865—*concl'd.*

upon the matter contained in the record and not the statement of the grounds thereof. *Nasiruddin Malik v. Urgulart*, 13 II R 209, commented on *UIENDRA NATH BOSE v. BHANDESI PRASAD* (1915) 20 C. W. N. 210

injunctions were called for or notice issued to the other side. *Clappan v. Moudin Kutti*, 1 L R 22 Mad 65, and *Tuljoram Rao v. Alagappa Chettiar*, 1 L R 35 Mad 1, followed. *Venkataranna Ayyar v. Madala Ammal*, 1 L R 23 Mad 169, and *Puhululu Abdu v. Putappa Kunthulu*, 1 L R 27 Mad 340, overruled. "In matters of discretion such as this, the Court will not ordinarily interfere on appeal though it has jurisdiction to do so." *Golding v. Wharton Salt Works Company*, 1 Q B D 374, followed. *SRINIVASA IYENGAR v. RAMASWAMI CHETTIAR* (1915) 1 L R 39 Mad 235

cls. 15, 30, 39—

See **LETTERS PATENT APPEAL.**

1 L R 43 Calc. 80

cls. 15, 44—

See **APPEAL** 1 L R 43 Calc 857

appeal under the, if competent—

See **LIMITATION ACT** (I) OF 1908, Arts 11 AND 13 1 L R 39 Mad. 1108

LETTERS PATENT APPEAL.

— True result of cancelling *Herein* of a judgment of several of a single Judge of the High Court—Leave to appeal to Privy Council—*Letters Patent, 1865* cls. 15, 36, 39—*Civil Procedure Code* (Act I of 1908), ss 110, 115—Court immediately below. "In an appeal under cl 15 of the Letters Patent (or Charter) the cancelling of a judgment of reversal passed by a single Judge of the High Court results in an affirmance of the decision of "the Court immediately below" such a Judge sitting alone is not a Court subordinate to the High Court, and thus no decision of a single Judge can be revised under s. 115 of the new Code. *DEBENDRA NATH DUTTA v. DEBENDRA MANIYAR* (1915) 1 L R 43 Calc. 90

LETTERS PATENT, PATNA.

cl. 10—*Point not argued before single Judge* if may be argued in appeal. The conduct of a case before a single Judge of High Court must not be regarded as a preliminary matter in which the parties and their legal advisers are not called upon to exert themselves. Ordinarily a point which had not been taken before a single Judge would not be allowed to be taken in appeal under cl. 10

LETTERS PATENT, PATNA—*concl'd*

of the Letters Patent *Saminatha Ayyar v. Venkatasubba Ayyar*, 1 L R 27 Mad 21, and *Akshab Chand v. Harimukh Rai*, 1 L R 34 All 41, referred to *The Tanjore Palace Estate v. Andi Jannatha* 11 I C 339, dissented from. *Bani Madhab v. Matungini*, 1 L R 13 Calc 104, and *Bechi v. Mohanullah Khan*, 1 L R 12 All 461, referred to. *DEBI CHARAN LAL v. SHUKRI MUNDI HUSSAIN* (1916) 20 C. W. N. 1303

LICENSE.

See **CONTRACT ACT** (IX OF 1872), s. 23. 7
1 L R 40 Bom. 64

See **TRANSFER OF PROPERTY ACT** (IV OF 1882) ss 105, 107
1 L R 38 All. 178

for erection of stables—

See **NUISANCE** 1 L R 40 Bom. 401

LIMITATION.

See **ASSESSMENT**
1 L R 43 Calc. 973

See **CRIMINAL PROCEDURE CODE** (1908),
SCH II CLS. 17, 20
1 L R 38 All. 95

See **CIVIL PROCEDURE CODE** (1908),
O XXI, R 2 1 L R 38 All. 204

See **CIVIL PROCEDURE CODE** (1908), O
XXIV, R 3 1 L R 38 All. 21

See **CONTRACT** 1 L R 39 Mad. 509

See **DECREE** 1 L R 49 Bom. 504

See **DECREE ASSIGNMENT OF**
1 L R 43 Calc. 890

See **HINDU LAW—ALIENATION**
1 L R 43 Calc. 417

See **HINDU LAW—JOINT FAMILY PRO-
PERTY** 1 L R 38 All. 128

See **HINDU LAW—SUCCESSION**
1 L R 38 All. 117

See **LIMITATION ACTS.**

See **MADRAS LAND ENCROACHMENT ACT**
(III OF 1903), ss 4, 5, 6, 7, 11
1 L R 39 Mad. 727

See **MORTGAGE**
1 L R 38 All. 97, 540

See **PROVINCIAL SMALL CAUSE COURTS
ACT** (VIII OF 1897) s. 23.
1 L R 38 All. 690

See **REVENUE** 1 L R 43 Calc. 903

See **SALE FOR ARREARS OF REVENUE**
1 L R 43 Calc. 770

See **SALE FOR ACCOUNT**
1 L R 43 Calc. 248

See **WASTE LANDS** 1 L R 43 I. A. 303

1. — Court of Hards,
competency of, to acknowledge debt—Effect of

LIMITATION—contd.

acknowledgment of pre-existing debt by the Court as regards limitation—Court of Wards Act (Beng. IX of 1879), s. 18—Limitation Act (IX of 1908), s. 19. The Court of Wards Act, 1879, does not contain any express power authorizing the Court to execute promissory notes. But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation under s. 19 of the Limitation Act. *Beti Maharani v. Collector of Etawah, I. L. R. 17 All. 198, Ram Charan Das v. Gaya Prasad, I. L. R. 30 All. 422, and Kondamolalu Linga Reddi v. Alluri Sarvarayudu, I. L. R. 34 Mad. 221, applied.* RASHBEHARY LAL MANDAR v. ANAND RAM (1915).

I. L. R. 43 Calc. 211

2. ————— *Limitation—Executor—Accrual of right to sue—Testator domiciled abroad—Probate—“Capable of instituting suit”—Devolution of interest—Substitution of plaintiff—Straits Settlements Ordinance No. 6 of 1896, ss. 17, 22—Straits Settlements Ordinance No. 31 of 1907, ss. 133, 196.* Straits Settlements Ordinance No. 6 of 1896(1), which deals with the limitation of suits, provides as follows:—s. 17, sub-s. (1): “When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.” S. 22. “When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall as regards him be deemed to have been instituted when he was so made a party . . .” *Held*, (i) that the executor of a will capable of probate in the Straits Settlements is a legal representative capable of instituting a suit, within the meaning of s. 17, sub-s. (1), from the date of the testator’s death and not only from the date when he obtains probate. *Quære* as to an executor who renounces probate: (ii) that, according to the English practice (which is made applicable in the Straits Settlements in the absence of any other provision), the will of a testator domiciled in British India, or elsewhere outside the Straits Settlements, although not proved in the place of the testator’s domicile, is capable of probate in the Straits Settlements if (a) it is valid according to the law of the testator’s place of domicile, and (b) if there are assets of the testator in the Straits Settlements; (iii) that s. 22 contemplates cases in which a suit is defective by reason of the right persons not having been made parties, but not cases in which the suit was originally properly constituted but has become defective owing to a devolution of interest; in the latter circumstances a carrying on order should be made under s. 169 of the Civil Procedure Ordinance No. 31 of 1907. MEYAPPA CHETTY v. SUPRAMANIAN CHETTY.

S. L. R. 43 I. A. 113

3. ————— *Limitation Act (XV of 1877), s. 14—Suspension of cause of action.* In this appeal their Lordships of the Judicial Committee affirmed, on the question of limitation,

LIMITATION—contd.

the decision of the High Court in the case of *Lakhan Chandra Sen v. Madhusudan Sen*, which is reported in *I. L. R. 35 Calc. 209*. NRITYAMONI DASSI v. LAKHAN CHANDRA SEN (1916).

I. L. R. 43 Calc. 660

4. ————— *Valuable Consideration what is—“Transfer,” if grant of permanent lease is—Suit to recover possession of property from lessee, if maintainable without making mortgage of same property, partly—Limitation Acts (XV of 1877), s. 10, Sch. II, Art. 134; and (IX of 1908), ss. 10, 30, Sch. I, Art. 134.* In a suit by a *shebait* to recover possession of *debutter* property vested in the *shebait* in trust for the deity, which had been transferred more than 12 years before the institution of the suit by the plaintiff’s predecessor in title, who had granted a *putni* lease of the property for consideration of a considerable fixed annual rent, but without receipt of any bonus:—*Held*, that the suit was barred by limitation under Art. 134 of Sch. I of Act IX of 1908. *Abhiram Goswami v. Shyma Charan Nundi, I. L. R. 36 Calc. 1003; L. R. 36 I. A. 148, Ishwar Shyam Chand Jiu v. Ram Kanai Ghose, I. L. R. 38 Calc. 526; L. R. 38 I. A. 76, and Damodar Das v. Lakhan Das, I. L. R. 37 Calc. 885; L. R. 37 I. A. 147, distinguished.* *Held*, further, that the grant of the permanent lease in this case was a transfer for valuable consideration. *Currie v. Misa, L. R. 10 Exch. 153, followed.* *Held*, also, that no period of limitation was prescribed for a suit of the present nature under the Act of 1877, and therefore s. 30 of the Act of 1908 has no application in this case. Where in this case the plaintiff had granted a valid usufructuary mortgage of the property in suit to a third person for a term which did not expire before the institution of the suit, it is not open to him to determine the lease to the defendants, the benefit of which had been expressly assigned by the plaintiff to the mortgagee. RAMESWAR MALIA v. SRI SRI JIU THAKUR (1915).

I. L. R. 43 Calc. 34

5. ————— *Adverse possession—Claim by person to lands notified by Government as reserved forest lands under Madras Forest Act (Madras Act V of 1882)—Onus of proof—Islands formed in bed of sea at mouth of tidal navigable river—Right of the Crown to such Islands—Limitation Act (XV of 1877), Arts. 111 and 119—Right of appeal—to High Court from decision of District Court under Madras Forest Act—Right under general provisions as to appeals in Civil Procedure Code.* In this appeal the question for determination was whether the Secretary of State in Council (appellant) was entitled to incorporate the lands in dispute into a reserved forest under the Madras Forest Act (Madras Act V of 1882), such lands being islands formed in the bed of the sea near the mouth or delta of the river Godavari, a tidal navigable river, and within 3 miles of the mainland: *Held*, that such islands were the property of the Crown which was not bounded in its dominion of the bed of the sea by the rise or fall of the tide. The Crown is the owner, and the owner in property

LIMITATION—*contd.*

of islands arising in the sea within the territorial limits of the Indian Empire. The onus of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. Objectors to afforestation preferring claims under the Forest Act against the Secretary of State for India are in the same position as persons bringing a suit in an ordinary Court for a declaration of right to which Art 144 of Sch. II of the Limitation Act, 1877, is applicable, the period of 12 years however being extended to 60 years by Art. 149, and the onus of establishing possession for the required period is upon the claimants. *Radha Gobind Roy v. English*, 7 C. L.

India v.
 quished.
 of the High Court.
 ants had not proved adverse possession for a period sufficient to establish a right against the Crown. Though an appeal from the District Judge to the High Court is not provided for in the Madras Forest Act in a claim to lands which have been notified as reserved forest lands under the Act such an appeal will lie under the provisions of the Civil Procedure Code. Where in such proceedings the District Court is reached, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the rules of the Civil Procedure Code are applicable. In such a case the ordinary incidents of litigation could only be excluded by specific provisions to that effect. *Kamaraju v. Secretary of State for India*, 1 L. R. 11 Mad. 309, approved. *Rangoon Doolahung Company v. Collector of Rangoon* 1 L. R. 49 Cal. 21, 1 L. R. 39 I. A. 197, distinguished. SECRETARY OF STATE FOR INDIA v. CHELLISAMI RAMA RAO (1916).

1 L. R. 39 Mad. 617

6. ——— Suit for contribution between joint debtors—Exoneration of defendant by the decree on the ground of limitation—Plaintiff paying the whole decree—Cause of action for contribution only after payment. The plaintiff and the defendant having each borrowed a certain sum of money from a stranger executed a joint promissory note in 1903 for the total amount in favour of the stranger. After receiving some amounts from both the promisees, the promisee sued them both in 1911 but the decree was for the balance due, only against the present plaintiff, the present defendant being exonerated on his plea of limitation. After paying the decree amount in March 1912 the plaintiff immediately sued the defendant for contribution. *Hill*, (i) that the right to sue for contribution arose only on plaintiff's payment, (ii) that the defendant was liable to contribute in spite of the fact that he was exonerated under the promisee's decree on the ground of limitation, and (iii) that the suit was not barred by limitation. The cause of action having arisen only on the date of plaintiff's payment. *Order v. Barker*, 2 I. P. G. and *Widdemarsch v. Guillel*, [1913] 2 C. L. 214, followed. The liability to contribute is based on

LIMITATION—*contd.*

an equity arising out of the co-debtor's payment and it has no reference to the original liability to the common promisee. The *obiter dictum* in page 311, *Subramania Aiyar v. Gopala Aiyar*, 1 L. R. 33 Mad. 305, not followed. *ABRAHAM BERNAT v. RAPHAEL MUTHURIAN* (1914)

1 L. R. 39 Mad. 263

LIMITATION ACT (XV OF 1877).

— s. 16, Sch. II, Art. 134—

See LIMITATION 1 L. R. 43 Cal. 13

— s. 14—

See LIMITATION 1 L. R. 43 Cal. 660

— ss. 19, 20—

See EXECUTION OF DECREE

1 L. R. 43 Cal. 207

— Sch. II, Art. 126—

See HINDU LAW—JOINT FAMILY PROPERTY 1 L. R. 38 All. 126

— Sch. II, Arts. 178, 179—

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 68, 69

1 L. R. 40 Bom. 321

— Sch. II, Arts. 179, 180—

See REVENUE 1 L. R. 43 Cal. 903

LIMITATION ACT (IX OF 1908).

— inapplicability of, to insolvency proceedings—

See INSOLVENCY, PROCEEDINGS IN

1 L. R. 39 Mad. 74

— ss. 3, 7; Sch. I, Art. 142—

Minor—Representative—

Death of the minor after majority but pending disability—Rights of personal representative to sue—Limitation. Where a minor acquired a cause of action to sue for possession of property and died within three years after attaining majority, his personal representative can, although twelve years have expired since the cause of action accrued, institute a suit on the same cause of action at any time within the three years period which had already commenced in the life time of deceased. In such a suit the deceased must be included in the term "plaintiff" for the purpose of Art. 142, *ibid.*, according to a 3 of the Limitation Act, "plaintiff" includes any person from or through whom the plaintiff derives his right to sue. *ABRAHAM BERNAT v. RAPHAEL MUTHURIAN* (1916)

1 L. R. 40 Bom. 564

case has come to the conclusion that sufficient cause has or has not been established within the meaning of s. 3 of the Limitation Act for instituting an appeal within time, the High Court will not interfere in second appeal. Where a judgment was

LIMITATION ACT (IX OF 1908)—*contd.***s. 5—*concl'd.***

passed on 27th September 1913 and the decree was prepared and signed on the same day and the annual vacation began on the following day and the Court reopened on 1st November and the appellants applied for a copy of the judgment on 3rd November and for a copy of the decree on 13th November and both copies were ready and were delivered on 21st November and the appeal was filed on 28th November in the lower Appellate Court: *Held*, that the whole of the time which elapsed from the delivery of the judgment to the reopening of the Court on November 1st, 1913, was part of the time requisite for obtaining copies of the judgment and decree, and that this must be so whether the appellant applied for copies on the day on which the Court reopened or on some later date. The words of s. 12, Limitation Act, do not appear to lay down any rule that the time requisite for obtaining a copy must be continuous. *DEBI CHARAN LAL v. SHEIKH MEHDI HUSSAIN* (1916).

20 C. W. N. 1303

ss. 5, 12, 29—

See **PROVINCIAL INSOLVENCY ACT (III OF 1907)**, s. 46, CL. (3).

I. L. R. 39 Mad. 593

ss. 5, 14 ; Sch. I, Art. 178—

See **CIVIL PROCEDURE CODE (1908)**, SCH. II, CLS. 17 AND 20.

I. L. R. 38 All. 85

ss. 10, 30 ; Sch. I, Art. 134—

See **LIMITATION** . I. L. R. 43 Calc. 34

s. 12—

See **DECREE AGAINST A MAJOR AS MINOR**
I. L. R. 39 Mad. 1031

s. 12—High Court judgment—Application for review—Limitation if runs from before the signing of decree. In computing the period of limitation for an application for review of a judgment of the High Court, the party applying for review is entitled to have excluded, under s. 12 of the Limitation Act, the time requisite for taking a copy of the decree, and the period of limitation cannot in such a case commence to run until, at all events, the day the decree was signed by the Judges. *GANGADHAR KARMAKAR v. SEKHAR BASISNI DASIA* (1916) . 20 C. W. N. 967

s. 12 ; Sch. I, Art. 179—Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree. *Held*, that s. 12 of the Indian Limitation Act, 1908, applies to applications for leave to appeal to His Majesty in Council. The appellant is therefore entitled to exclude the day upon which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed. *RAM SARUP v. JASWANT RAI* (1915).

I. L. R. 38 All. 82

LIMITATION ACT (IX OF 1908)—*contd.***s. 14—**

See **LIMITATION ACT (IX OF 1908)**, SCH. I, ARTS. 62, 120 . I. L. R. 39 Mad. 62

Withdrawal of suit—Fresh suit, filing of, whether saved by. S. 14 of the (Indian) Limitation Act (IX of 1908) applies only to cases where a Court itself decides that it is unable to entertain a suit for want of jurisdiction or other cause of a like nature and has no application to a case where the plaintiff himself withdraws his suit on discovery of some technical defect which would involve a failure. *Varajlal v. Shomeshwar, I. L. R. 29 Bom. 219*, and *Upendra Nath Nag Chowdhury v. Suryakantha Ray Chowdhury, 20 I. C. 205*, followed. *ARUNACHELLAM CHETTIAR v. LAKSHMANA AYYAR* (1915).

I. L. R. 39 Mad. 936

s. 19—

See **LIMITATION**. I. L. R. 43 Calc. 211

s. 19 ; Sch. I, Art. 148—

See **MORTGAGE** . I. L. R. 38 All. 540

s. 22—Substitution of beneficiaries for administratrix after time—New plaintiff. Where the widow of a deceased person G was appointed administratrix of his estate until G's eldest son should attain majority, and a suit was instituted by the widow after the eldest son of G had attained majority under a *bona fide* belief that she was competent to sue as administratrix, but on discovering her mistake, she prayed that the three sons of G for whose benefit she had been appointed administratrix, be substituted as plaintiffs and the substitution was made at a time when the suit if instituted would have been time-barred: *Held*, that this was not the addition of a new plaintiff within the meaning of s. 22 of the Limitation Act. *Dhurm Das v. Shama Sundari, 3 Moo. I. A. 229*, *Hari Saran v. Bhubaneswari, I. L. R. 16 Calc. 40*, and *Peary Mohan v. Narendra Nath, 9 C. W. N. 421*, referred to. *NISTARINI DASIA v. SARAT CHANDRA MAZUMDAR* (1915) . 20 C. W. N. 49

Sch. I, Arts. 11, 13—Civil Procedure Code (Act V of 1908), O. XXI, r. 63—Claim petition filed on the original side of the High Court—Claim allowed—Appeal under the Letters Patent, if competent—Order confirming original order—Suit under O. XXI, r. 63, after one year from date of original order, but within one year from order on appeal—Starting point of limitation. A claim petition was filed by the second defendant objecting to the attachment of certain properties as belonging to the first defendant in execution of a decree passed by the High Court on its original side. The petition was allowed in favour of the claimant by an order passed by a single Judge of the High Court on its original side. The plaintiff, who was the decree-holder, filed an appeal against the order to the High Court under the Letters Patent, and the original order was confirmed on appeal. The plaintiff brought a suit under O. XXI, r. 63 of the Code of Civil Procedure (Act V of 1908), to establish his right to attach the property, more than

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts. 11, 13—*contd.*

one year from the date of the original order but within one year from the date of the order passed on appeal: *Held*, that Art. 11 and not Art. 13 of the Limitation Act (IX of 1908) applied to the case but that the suit was not barred, as the starting point of limitation under Art. 11 was the date of the order passed on appeal. The word "order" in Art. 11 means a decree or order of a court of law.

case, in an appeal), in accordance with the recognised principles of jurisprudence. An appeal lies under the Letters of the Judge of the passed on a

GOPAL NIDAL I. L. R. 39 Mad. 1198

Sch. I, Art. 12—

See DECREE AGAINST A MAJOR AS MINOR
I. L. R. 39 Mad. 1031

Sch. I, Arts. 31, 49, 115—

See SPECIFIC MOVABLE PROPERTY
I. L. R. 39 Mad. 1

of the terms of his *kabuliat* Sharoon Dass Mondal v. Jaggasur Roy Chowdhry, I L R 26 Cal. 561, s. C. 3 C 11 N 464, relied on. TAKEN MONDAL v. SARADHI CHAKRAMI (1915)

20 C. W. N. 601

Sch. I, Arts. 49, 115, 145—*Gold deposited with goldsmith to be made into ornaments—Suit to recover—Limitation* Where the allegation was that nearly 11 years ago the plaintiff had made over a tola of gold to defendant to be made into ornaments, but no time was fixed and the latter put him off from time to time until being pressed by plaintiff on 21st March 1914, he promised to make and deliver the ornaments within 15 days, but failed to do so. *Held*, that Art. 145 of Sch. I to the Limitation Act applied to a suit for recovery of the gold deposited. Art. 145 applies even when the property is not recoverable in specie and does not cease to be applicable merely because the defendant refuses to return the property. Such refusal does not bring into operation Art. 49 or 49. Even if Art. 49 applied limitation would begin running from 21st April 1914 before which there was no refusal. If Art. 115 applied limitation would run from the same date, when the contract was broken. GANAGARI CHAKRAVARTY v. NARAY CHANDRA BANIKYA (1915) 20 C. W. N. 232

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 59, 60—

Loan or deposit—Money left with a trader, not being a banker, by loan or deposit—Deposit, in Art. 60 meaning of, Under art. 60 of the Limitation Act (IX of 1908), money

demand. The word "deposit" in Art. 60 is used in a non legal sense. *Official Assignee of Madras v. Smith*, I. L. R. 32 Mad. 68, *Perumkuttayyar v. Annal v. Nammalvar Chetti*, I L R 15 Mad. 390 and *Jashur Chunder Bhadury v. Jibun Kumari Bibi*, I L R 16 Cal. 25, followed. *Dharam Das v. Ganga Datta*, I L R 29 All. 772, and *Ickla Dhanjy v. Netha*, I L R 13 Rom. 338, dissented from *Sinclair v. Brougham* (*Irish Bank Case*), [1914] A C 398, referred to. SUBRAMANIAN CHETTIAR v. KADIRESAN CHETTIAR (1916).

I. L. R. 39 Mad. 1081

Sch. I, Art. 62—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 I. L. R. 40 Bom. 614

Suit for money taken in execution of a decree—Compensation—Suit for

court aim to realize the rents due from the tenants and they were deposited in Court and ultimately paid over to the decree holder. The purchaser brought the present suit against the decree holder for the recovery of the money within three years of the payment to him. *Held*, that the suit was money had and received within the meaning of art. 62 of sch. I to the Indian Limitation Act. *Jagannath Jachardas v. Gulam Jilani Chaudhary*, I L R 5 Bom. 17, dissented from *NIDAR SINGH v. GANGA DEVI* (1916)

I. L. R. 35 All. 676

Sch. I, Arts. 62, 120—

I. ———— *Suit for money on the ground of wrongful retention of distribution, governed by Art. 62 and not by Art. 120 of the Limitation Act—S. 14 of the Limitation Act—Time taken to file and to prosecute a revision petition against order of wrongful distribution not to be deducted under s. 14* A suit for money under s. 73, cl. (2), Civil Procedure Code, on the ground that the plaintiff and not the defendant was entitled to receive the same in proceedings in execution of a decree for rateable distribution is governed by Art. 62 and not by Art. 120 of the Limitation Act (IX of 1908), the cause of action arising on the date of wrongful payment to the defendant. In computing the period of limitation for the bringing of such a suit the plaintiff is not entitled to deduct under s. 14 of the Limitation Act the time taken to file and to prosecute a revision petition against order of wrongful distribution.

LIMITATION ACT (IX OF 1908)—contd.**Sch. I, Arts. 62, 120—concl'd.**

ation Act the period of time taken by him to file a revision petition in the High Court or the time during which the plaintiff was prosecuting the revision petition against the order of wrongful distribution. *Vishnu Bhikaji Phadke v. Achut Jogannath Ghatte*, I. L. R. 15 Bom. 438, followed. *Ramaswamy Chetty v. Harikrishna Chettyar*, 21 Mad. L. J. 705, not followed. *BAIZNATH LALA v. RAMADOSS* (1914) . I. L. R. 39 Mad. 62

2. *Civil Procedure Code (Act V of 1908), O. XXII, rr. 11 and 9—Withdrawal of surplus sale-proceeds belonging to the plaintiff by defendant—Suit instituted more than three years from date of withdrawal.* Where an application for substitution was made more than six months after the appellant's death before the Registrar and the respondents did not put in any objection before the Registrar to the hearing of the appeal, the application for substitution was treated as an application for the restoration of the appeal after abatement. The plaintiff, a purchaser at auction sale of a revenue-paying estate, made default in the payment of Government revenue and the estate was sold and the surplus sale proceeds were withdrawn by the defendants, the original proprietors whose names still remained in the register, and a suit was instituted by the plaintiff, for the recovery of the money so withdrawn, more than three years after the date of withdrawal: *Held*, that Art. 62 of the Limitation Act applied and the suit was barred by limitation. *Muhammad Wahib v. Muhammad Ameer*, I. L. R. 32 Calc. 527, and *Lachmi Narain Singh v. Dhanukdhari Prasad Singh*, 17 Ind. Cas. 351, referred to. Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs, is money, within the meaning of Art. 62, paid to that party for the use of the actual person in whom the right to receive it vests. *HARIHAR MISSER v. SYED MOHAMMED* (1916) 20 C. W. N. 983

Sch. I, Art. 80—

Promissory note payable on demand—Agreement fixing time for payment—Suit, by payee—Limitation, from the expiry of the period fixed. Art. 80 of the Limitation Act is the article applicable to a suit by the payee on a promissory note payable on demand but accompanied by an agreement fixing a period for payment and time begins to run from the expiry of the period fixed in the accompanying agreement. *Simon v. Hakim Mahomed Sheriff*, I. L. R. 19 Mad. 368, and *Somasundaram Chettyar v. Narasimha Chariar*, I. L. R. 29 Mad. 212 overruled. *ANNAMALAI CHETTY v. VELAYUDA NADAR* (1915).

I. L. R. 39 Mad. 129

Sch. I, Art. 89—

Agent, liability of, to principal, suit on—Limitation—Agency, termination of—Indian Contract Act (IX of 1872). Money is moveable property within the meaning of Art. 89

LIMITATION ACT (IX OF 1908)—contd.**Sch. I, Art. 89—concl'd.**

of the Limitation Act. *Ashgar Ali Khan v. Khurshed Ali Khan*, I. L. R. 24 All. 27, followed. Art. 89 applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run when the account is, during the continuance of the agency, demanded and refused; or, when no such demand is made when the agency terminates. An agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue. *Babul Ram v. Ram Dayal*, I. L. R. 12 All. 541, and *Fink v. Buldeo Das*, I. L. R. 26 Calc. 715, dissented from. *Jogesh Chandra Ghose v. Benode Lal Roy*, 14 C. W. N. 122, not followed. *VENKATACHALAM v. NARAYANAN* (1914) . I. L. R. 39 Mad. 376

Sch. I, Arts. 89, 115, 132—

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 248

Sch. I, Art. 91—Alienation by Hindu widow—Suit by reversioner to recover possession of property alienated—Alienation found to be sham—Limitation. A Hindu widow having alienated a property of her husband, the reversioners sued more than three years after the date of alienation to recover possession of the property. It was found that the alienation was merely a sham. The lower Courts held that Art. 91 of the Second Schedule of the Limitation Act 1908 did not apply and decreed the suit. The defendant having appealed. *Held*, that Art. 91 of the Second Schedule of the Limitation Act had no application, for the apparent obstacle presented by the mortgage proved unreal and ineffectual. *MANOHARAM v. PANABHAI LAL-LUBHAI* (1915) I. L. R. 40 Bom. 51

Sch. I, Art. 91 or 124—

See TRUSTEES OF A TEMPLE.

I. L. R. 39 Mad. 456

Sch. I, Arts. 92, 93—

Suit to declare the forgery of an instrument—Attempt—Lease—Attempt to record a lease under the Record of Rights Act (Bom. Act IV of 1903) is not an attempt to enforce. The defendant applied to the Mamlatdar to record, under the Record of Rights Act, 1903, a lease under which he claimed to be entitled to a rent of 400 cocoanuts from the plaintiff. The application was made on the 4th August 1903, but the plaintiff having complained that the document was a forgery the Mamlatdar declined to record it. The defendant then applied to the Collector who on the 11th August 1909 ordered that the lease should be recorded. On the strength of the record, the defendant sued in the Mamlatdar's Court for the enforcement of the terms of the lease and recovered in April and July 1912 cocoanuts of the value of upwards of Rs. 40. Within three years of the recovery of these cocoanuts the plaintiff brought the suit to recover back the value of the cocoanuts on the footing of the alleged lease being

LIMITATION ACT (IX OF 1908)—*contd.***Sch. I, Arts. 134, 144—*concl'd.***

gaggee—Limitation—Transfer of Property Act (IV of 1882), s. 95. In 1860 the father of a family of four sons mortgaged some of the family property. In 1877, after the death of the father, one of the sons again mortgaged the property and with the money borrowed on the second mortgage paid off the first mortgage. The second mortgagee or his son remained in possession of the property as mortgagee until 1898, when the second mortgagor sold it to the son of the second mortgagee. In 1912, a grandson of the original mortgagor sued for redemption of the mortgage of 1860. *Held*, that the suit was barred by limitation under Art. 144 of the first schedule to the Indian Limitation Act, 1908, whatever might have been the position of the members of the family (which was not clear) as regards jointness or separation. Art. 134 does not apply to a person who being interested in part of a mortgage redeems the whole, such person being merely a charge-holder and not a mortgagee. *Ashfaq Akmal v. Wasir Ali, I. L. R. 14 All. 1, distinguished. JAY KISHAN JOSHI v. BUDHANAND JOSHI (1915) . . . I. L. R. 38 All. 138*

Sch. I, Art. 135—

See MORTGAGE . . . I. L. R. 38 All. 97

Sch. I, Arts. 140, 141—

Suit by a reversioner—Mortgage—Redemption—Widow, disappearance of—Presumption of death—Onus of proof—Indian Evidence Act (I of 1872), s. 108. One S died leaving him surviving his widowed daughter-in-law R. In 1860 R passed a mortgage bond in favour of the 1st defendant's father. In 1865 R disappeared and was not heard of since 1870. In 1911 the plaintiff, as the reversioner of S, sued to recover possession of the property alienated by R. The defendants pleaded limitation. The first Court decided in plaintiff's favour on the ground that under s. 108 of the Indian Evidence Act the Court must presume that R died at the time of the suit and therefore the claim was in time. The lower Appellate Court reversed the decree and dismissed the suit holding that the presumption of R's death at the time of the suit could not be drawn and that the *onus probandi* which lay heavily on the plaintiff to show when R died was not discharged. The plaintiff having appealed: *Held*, that it lay on the plaintiff to show affirmatively that he had brought his suit within twelve years from the actual death of R. *Nepean v. Doe d. Knight, 2 M. & W. 394, followed.* Art. 141 of the Limitation Act is merely an extension of Art. 140, with special reference to persons succeeding to an estate as reversioners upon the cessation of the peculiar estate of a Hindu widow. But the plaintiff's case under each Article rests upon the same principle. The doctrine of non-adverse possession does not obtain in regard to such suits and the plaintiff suing in ejectment must prove whether it be that he sues as remainderman in the English sense or as a reversioner in the Hindu sense, that he sues within twelve years of the estate falling into possession, and that onus is

LIMITATION ACT (IX OF 1908)—*contd.***Sch. I, Arts. 140, 141—*concl'd.***

in no way removed by any presumption which can be drawn according to the terms of s. 108 of the Evidence Act, 1872. *JAYAWANT JIVANRAO v. RAMCHANDRA NARAYAN (1915).*

I. L. R. 40 Bom. 239

Sch. I, Art. 141—

See HINDU LAW—SUCCESSION.

I. L. R. 38 All. 117

Sch. I, Arts. 165, 181—*Civil Procedure Code (1908), s. 47—Execution of decree—Limitation—Application by judgment-debtor to be restored to possession of immoveable property taken by the decree-holder in excess of that decreed.* *Held*, that the application of a judgment-debtor for restoration of immoveable property seized by the decree-holder in excess of what has been decreed, is one under s. 47 of the Code of Civil Procedure and is governed by Art. 181 of Schedule I to the Indian Limitation Act. *Ratnam Ayyar v. Krishna Doss Vital Doss, I. L. R. 21 Mad. 494, Har Din Singh v. Lochman Singh, I. L. R. 25 All. 343, dissented from. ABDUL KARIM v. ISLAMUNNISSA BIBI (1916) . . . I. L. R. 38 All. 339*

Sch. I, Art. 181—

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5. . . I. L. R. 38 All. 21

Sch. I, Arts. 181, 182, 183—

See MORTGAGE DECREE.

I. L. R. 39 Mad. 544

Sch. I, Art. 182—

Application for execution of decree to Court which passed the decree—Application made after transfer of decree to another Court for execution—"Proper Court," meaning of—Civil Procedure Code (Act XIV of 1889), ss. 223 and 224—Civil Procedure Code (Act V of 1908), ss. 38, 39 and 41. In this appeal their Lordships of the Judicial Committee held (affirming the decision of the High Court) that an application for execution of a decree not having been made to the "proper Court" within the meaning of art. 182 of sch. I of the Limitation Act, 1908, was insufficient to prevent limitation from running, and that the execution of the decree was consequently barred. *Maharajah of Bobbili v. Narasaraju Peda Balaraj Simkhulu, I. L. R. 37 Mad. 231, upheld. MAHARAJAH OF BOBBILI v. NARASARAJU BAHADUR (1916) . . . I. L. R. 39 Mad. 640*

Sch. I, Art. 182—

1. Interpretation, principle of—Execution application—Art. 182, cl. (6)—Notice, issue of, whether, gives a fresh starting point. Art. 182 of the Limitation Act should receive a fair and liberal but not too technical a construction, so as to enable the decree-holder to obtain the fruits of his decree. The issue of notice referred to in cl. (6) of Art. 182 of the Act need not be in respect of an application made in accordance with law. The words "in accordance

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 182—*contd.*

with law" found in cl. (5) should not be introduced into cl. (6) when the Legislature has not thought fit to do so. *Janna Dul v. Bheknath Singh*, 6 All. L. J. 311, and *Deo Narain Singh v. Sri Bhagwat Nair*, 10 L. C. 411, followed. A decision especially on procedure cannot be treated as *res judicata* when that procedure itself is changed by the statute law. *VARADARAJA MUDALI v. MURUGESAM PILLAI* (1915).

I. L. R. 39 Mad. 923

2. — *Execution opposed by judgment debtor alleging payment and asking for certification thereof—Plea successful in first Court.*

get rid of such obstruction, the execution is sus-

give him a right to defer execution until the disposal of such appeal. *Ashrafuddin Ahmed v. Bevin Behari Mullick*, 1 L. R. 30 Cal. 407, 413, and *Madhab Mani Das v. Lambert*, 1 L. R. 37 Cal. 190; s. c. 15 C. W. N. 337, 12 C. L. J. 328, relied on. *KANTICK CHANDRA MONDAL v. NILMANI MONDAL* (1916). 20 C. W. N. 686

— Sch. I, Art. 182, cl. (2)—*Suit for ejectment—Decree against some defendants on consent and against others on contest—Appeal by contesting defendants—Dismissal of appeal—Execution of decree, application for, within three years of dismissal of appeal but more than three years after the first Court's decree, if barred as against consenting defendants.* A suit for ejectment brought against two sets of defendants, A and B, was decreed on 17th September 1903 against set A upon consent and against set B upon contest, the result being embodied in one decree which did not define the respective shares of the two sets of defendants. An appeal preferred by set B alone in which they did not make set A parties was not disposed of until 6th May 1904. On 7th May 1910 application was made for execution of the decree against both sets of defendants; *Held*, that the application was not time barred as against set A, even though set A did not and could not appeal against the decree of 17th September 1903, inasmuch as the appeal of set B was of necessity against the entire decree—there being a chance or risk of the Appellate Court modifying the decree even as against set A. That on appeal by the contesting defendants the whole matter was reopened and the decree holders were entitled to the benefit of Art. 182, vol. 3, cl. (2) of Sch. I of the Limitation Act. *Bahuk Nair v. Munno Das*, 1 L. R. 36 All. 359; s. c. 15 C. W. N. 753, and *Asif Hussain v. Gouri Nair*, 1 L. R. 38 All. 31; s. c. 15 C. W. N. 310 and *Lau v. Benarasi Prasad*, 12 C. W. N. 257, referred to. *Quare*: Whether time runs against the decree holder

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 182, cl. (2)—*contd.*

from the date of the final decree in the appeal irrespective of the question whether the appeal did or did not imperil the decree whereof execution was ultimately sought. *LOKENATH SINGH v. GURU SINGH* (1915). 20 C. W. N. 178

— Sch. I, Art. 182 (5)—*Application for execution—Limitation—Step in aid of execution—Application by decree holder certifying portion of payment with a prayer to strike off execution on satisfaction.* An application by the decree holder certifying payment of a portion of the decretal amount out of Court is a step in aid of execution of the decree within the meaning of Art. 182 (5) of the Limitation Act, provided the payment asserted has actually been made. The fact that there is in the application a prayer that the execution case might be struck off after satisfaction does not take it out of the operation of the above rule. Where an application for execution filed within time which had been returned for amendment of certain formal defects was re-filed after the period of limitation had expired and after the time allowed by the Court for the purpose, with an application explaining the delay and the petition was accepted. *Held*, that the Court had in fact in exercise of its discretion enlarged the time under a 148, Civil Procedure Code, though there was no express order to that effect. *GORAL PROSHAN BHAGAT v. RAJENDRA LAL PANJA* (1915). 20 C. W. N. 615

— Sch. I, Art. 182 (7)—

See CIVIL PROCEDURE CODE (1908), O XXI, n. 2 I. L. R. 33 All. 204

— Sch. I, Arts. 182, 183—

See Revision I. L. R. 43 Cal. 903

Privy Court
22nd January

An Order of Her Majesty in Council, dated the 25th November 1899 was made to a Subordinate Judge to whom the execution proceedings were transferred. *Held*, that the application was governed by Art. 183 of the 1st Schedule of the Limitation Act, 1904, according to which an application to enforce an Order of the Sovereign in Council must be made within 12 years from the date on which a present right to enforce the order accrued to some person capable of releasing the right, provided, *inter alia*, that where the Order has been revived, 12 years shall be computed from the date of such revival. Where on an application for execution notice is issued under a 216 of the Code of Civil Procedure, 1877, or a 248 of the Code of Civil Procedure, 1902, and the Court has decided that the decree is still capable of execution and makes an order for execution, there has been a revival within the meaning of the article. Where an Order in Council is transmitted to a subordinate Court for execution without any notice being given to the judgment debtors, it would not be a revival of the Order. *TATHIRAM DEO NARAYAN SINGH v. BADEE MISHRA* (1916). 20 C. W. N. 1051

—contd.

s. 6, sub-s. (6) and s. 8—Government

lands under ryotwari tenure, purchased by zamindars

—Release of revenue on such lands—Zamindars

acquisition Act (I of 1894)—Compensation—Substi-

tution of ryotwari lands as zamindari lands—Suit to

effect—Jurisdiction of Civil Courts—Acquisition by

landholder of occupancy right—Acquisition by

tenant of landholder's right, difference between.

Where a zamindar who had purchased some ryot-

wari lands from a Government ryot and obtained

a release of revenue due on such lands in lieu of

compensation payable to him for some other lands

taken up by the Government under the Land

Acquisition Act (I of 1894), brought a suit in 1911

in the District Court to recover such lands from a

tenant who was in possession thereof since 1901,

and the defendant contended that he had acquired

occupancy right thereto and that the Civil Courts

had no jurisdiction to entertain the suit: Held (i)

that assuming that the suit lands were substituted

as part of the zamindari, the plaintiff, who was a

Government ryot of such lands prior to the sub-

stitution had occupancy right therein and did not

lose such right by becoming interested in them as a

landholder, under the explanation to sub-s. (6) of

s. 6 of the Madras Estates Land Act; (ii) that the

provision of s. 8 (1) of the Act refer to the acqui-

sition of occupancy right by landholders and not

to the acquisition of landholders' right by ryots;

and (iii) that in any event the general provisions of

of s. 8 (1) cannot affect the special provisions of

the explanation to sub-s. (6) of s. 6 of the Act.

ZAMINDAR OF SATTYAPALLE v. ZAMINDAR OF

SOUTH VALUR (1915)

I. L. R. 39 Mad. 944

SS. 11 and 151—Suit for injunction

by landholder against tenant—Agricultural hold-

ing—Erection of building on part of the holding—

Part rendered unfit for agricultural purposes—

Holding as a whole not rendered unfit, effect of—

Right of landholder to reliefs under s. 151—Bengal

Tenancy Act (VII of 1886), s. 23. S. 151 of the

Madras Estates Land Act gives the landholder a

right to sue for any of the reliefs mentioned in

clauses 1 and 2 thereof only when the holding as a

whole was rendered substantially unfit for agri-

cultural purposes by the acts of the ryot committed

on the whole or any part of the holding. Hari

Mohun Mitter v. Surendra Narayan Singh, I. L. R.

34 Cal. 718, followed. RAMA v. ARUNACHALAM

(1915)

s. 13, cl. (3)—Improvements at tenants'

sole expense—Payment of higher rent therefor for

sixty years—Presumption of a binding contract

to pay at a higher rate under the Rent Recovery

Act—Madras Estates Land Act (I of 1908), s. 28—

Saddur and Mathuri Kasaru, not illegal cesses

within s. 143 of the Act. Held, by NARAYAN and

KUMARASWAMI SASTRIAR J.J. (Sadasiva Ayyar

J. dissenting), that—(i) s. 13, clause (3) (Madras

Estates Land Act) does not enable a tenant to

claim exemption from liability to pay a higher rate

of rent for crops raised with the help of improve-

ments made at the tenants' sole expense where

the improvements had been effected before the

binding contract entered into between the land-

lord and the tenant before the passing of the Act

for the payment of such enhanced rent, (ii) the

section applies only to contracts and improvements

made after the Madras Estates Land Act came

into force, (iii) the right to levy increased assess-

ments in consequence of improvements effected

before the Act being a vested right in the land-

holder, the section cannot be construed so as to

operate retrospectively and to defeat the same

operation when there is no indication in the sec-

tion that it is to operate retrospectively and (iv)

the rule embodied in s. 28 of the Act applies to

the increased assessment and makes it binding

between the parties. Per Sadasiva Ayyar and

NARAYAN J.J.—Where the higher rate was regularly

paid for sixty years even in respect of the im-

provements effected at the tenants' sole expense,

the Courts could presume a lawful origin for a

contract to pay like that under the Rent

Recovery Act (Madras Act VIII of 1866). Per

Sadasiva Ayyar J.—Saddurwar (charge for sta-

tionary) and Mathuri Kasaru (straw rent) which

were being customarily paid along with the rent

for a long number of years form part of the rent

and are not additional illegal cesses within s.

143 of the Madras Estates Land Act. VENKATA

PERUMAL RAJA v. RAMUDU (1914)

I. L. R. 39 Mad. 84

s. 28—

See MADRAS ESTATES LAND ACT (I OF

1908), s. 13, cl. (3).

I. L. R. 39 Mad. 84

ss. 164—167—Officer, preparing record

of rights under—Criminal Procedure Code (Act V

of 1898), s. 476, not a Court within the meaning of.

A revenue Officer preparing a record of rights

under ss. 164—167 of the Madras Estates Land

Act, is only discharging an executive function of

Government and is not a Court within the mean-

ing of s. 476 of the Code of Criminal Procedure.

Re HANUMANTHA RAO (1915)

I. L. R. 39 Mad. 414

s. 139 and cl. (12) of Part A of

Schedule—Suit to recover lands under the Act

for non-payment of rent, non-maintenance of

Part A of schedule to the Madras Estates

Land Act (I of 1908) preclude a Civil Court from

taking cognizance of a suit by a ryot, to recover

possession of a holding sold under the Madras

Estates Land Act, for non-payment of rent, on

the ground that the landholder had no right to

sell the holding. Clause (12) is not confined to a

suit to question an intended sale of the holding.

Gouse Mohideen Saib v. Muthiah Chettiar, 26 Mad

L. J. 36, distinguished. RAMAKRISHNAN v. RAMA

SWAMI (1914)

I. L. R. 39 Mad. 6.

—MADRAS ESTATES LAND ACT (1 OF 1908)—

—ss. 189, 213, 134, 81 and 72—Hydrocarbons—Lull oil distant—Suit for damages—Jurisdiction—Hecchue Court—Madras Rent Recovery

1111.1 (1) 1995, 68 28 Y. A. by the
 tenant of a residential landowner
 in such a way as to constitute a
 mortgage or other security interest
 in the property.

not in terms apply merely because otherwise, the previous would be "meanings and given some

1898] *Neer, Derby Union v Massachusetts Life Insurance Society* [1897] A C 617, referred to Bulla (2) and (3) which were drafted in place of 49 and 78 of the Tent Hecury. Act were in baby retained by - inadvertance, after the jurisdiction

dictum only where the suit is not brought in

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

to the Commission, and the Commission has been very helpful in this regard. The Commission has been very helpful in this regard. The Commission has been very helpful in this regard.

visited by a Government food agent whose motives have been discredited under 27 and whether assuming that he could do so, the jurisdiction is an exclusive one in the license Court. NARAYANASWAMY v. VEDANTASWAMY, 1 L. R. 20 Mad. 233 (1912)

of Schedule 1—Amendment, Act 131 of 1977, a 2-
22 210, 211 and Art. 8 of Part A

into force, but within three years of his attaining majority. On the date the sales of the estate brought in £100,000, after the Estates Land Act came into force, he became a major on 21st October 1900. A. Lindholst, under the Statute Estates Land Act, who became a major on 21st October 1900, brought in £100,000, after the Estates Land Act came into force, he became a major on 21st October 1900.

more than three years had elapsed since the patent had become due. The latter Charles claimed the suit as barred by the limitation of three years (enforced by ss. 210 and 211 and Art. 8 of Law 1) promulgated by the Italian Law No. 1. Hall & Matthews, C.J. and CHARLES MATTHEWS & SONS LTD. v. MATTES, C.J. and CHARLES MATTHEWS & SONS LTD.

MADRAS ESTATES LAND ACT (I OF 1908)—

— N. 10-1010

to the exemption and extend it given by 7 of the Limitation Act, and (b) that the suits were therefore within time.

that it should not be continued retrospectively, but rather be applied prospectively, starting on the date that the operations began. The respective operations of state-owned companies, including China's state-owned oil companies, should be subject to the same rules as those of private companies.

Chandraraj v. E. H. J. Cok, 1125, affirmed *Perrin v. Chandraraj*, 1124, reversed.

that in fact at a time the suit is instituted the government the action and not the one under which the rights accrued. Some of the cases cited in the opinion are cases in which the rights accrued. Some of the cases cited in the opinion are cases in which the rights accrued. Some of the cases cited in the opinion are cases in which the rights accrued.

MADRAS FOREST ACT (XXI OF 1882).

[illegible][illegible]

Male Secretary of State for India & Parganah
 Ishak Chatter, 21 Mal L J 31, 1st fl. 2nd
 Parganah, 21 Mal L J 35, distinguished
 21 Mal L J 35, distinguished
 1. L. R. 39 Mal. 431
 1. L. R. 39 Mal. 431

MADRAS LAND ENCROACHMENT ACT (III
OF 1905).

Lay of land measurement—See definition—
 as object of land measurement—See definition—
 of section—Land, n. A tract under a
 of the State Land Department Act (III, c.
 1917) was based on the latitude and general survey
 point was located from the line of the
 line was located from the line of the
 line was located from the line of the

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894)—*concl.*

s. 5—*concl.*

the Madras Proprietary Estates Village Service Act (II of 1894) does not destroy the rights of any member of a joint family who has a hereditary interest in it. The alienation of a service zamindari is void and though it is subsequently enfranchised, the alienor cannot invoke the aid of s. 43 of the Transfer of Property Act in his favour. *Ramaswami Natch v. Ramaswami Chetty*, I. L. R. 30 Mad. 255, *Narhari Sahu v. Siva Narayan Naidu* (1913) Mad. W. N. 415, and *Bochu Ramayya v. Pharsathi* (1913) Mad. W. N. 999, referred to. Property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons take an interest by birth according to the Mitakshara law. Cases reviewed. *Ramayya v. Jagannadham* (1915) I. L. R. 39 Mad. 930.

MADRAS RENT RECOVERY ACT (VIII OF 1865)—

See Madras Estates Land Act (I of 1908), s. 13, cl. (3).

I. L. R. 39 Mad. 84

s. 49, 78—

See Madras Estates Land Act (I of 1908), 13, cl. (3)

I. L. R. 39 Mad. 239

MADRAS VILLAGE COURTS ACT (I OF 1889).

s. 24—Order of Deputy Collector de-

barring one from appearing as vakil for parties in village Courts, *infra*—Specific Relief Act (I

of 1887), s. 42—Suits for declaration of invalidity of order, maintainability of. Under s. 24 of the

Madras Village Courts Act (I of 1889) any person holding a vakalatnama from a party may appear

and plead in a village court, and there is no provision in the Act for debarring any one from this

privilege. The power of removing, suspending and dismissing village munsifs conferred on Divisional officers does not include the power of debar-

ring a person from acting as a vakil for a party in village courts. A suit for a declaration that an

order debarring one from acting as vakil for another in village courts is void is maintainable though it may not be covered by s. 42 of the Spe-

cific Relief Act (I of 1877). *Ramachandrarao v. Secretary of State for India* (1915)

I. L. R. 39 Mad. 808

MADRAS WATER-CRESS ACT (VII OF 1865).

Water-cress—Zamindari lands—Excess area, whether liable to pay water-

cress—Madras Land Encroachment Act (III of 1905), effect of. Where a right to take water is

proved, even though no express agreement on behalf of Government not to levy any charge is

proved, an engagement under Act VII of 1865 will be implied and no cess can be levied. Per

Sankaran Nair, J.—Act III of 1905 did not take away any rights that existed at the time the Act

MADRAS LAND ENCROACHMENT ACT (III OF 1905)—*concl.*

s. 5—*concl.*

this suit for a declaration of his title to the land, injunctive and for the refund of the assessment

levied. *Held*, that the notice under s. 7 of the

Madras Land Encroachment Act calling on the

person in occupation to show cause why he should

not be proceeded against under s. 5 or 6 of the

Act does not give rise to a cause of action; but

that the suit was barred, having been filed more

than six months after the levy of assessment. *Narayanan Pillai v. Secretary of State*, 22 Mad.

L. J. 162, approved. *Bhaskarudu v. Subbarajudu*, I. L. R. 38 Mad. 674, considered. The

Secretary of State for India v. Assam (1915)

I. L. R. 39 Mad. 727

MADRAS LOCAL BOARDS ACT (V OF 1884).

s. 73—Mortgagee with possession, where

her intermediate holder—His right to recover rent.

A mortgagee with possession is an intermediate

tenant-holder within the meaning of s. 73 of the

Local Boards Act (V of 1884), and is entitled to

recover rent by summary process. The tenant's

liability to pay him is not abrogated by a contract

to which he was not a party. *Jagannakur v. Alangan of Nandigan Estate* (1914)

I. L. R. 39 Mad. 269

MADRAS PLANTERS' LABOUR ACT (I OF 1903).

s. 24 and 35—Breach of contract by

misery or labour—Prosecution of master—

Successful prosecutions and convictions, if permis-

sible under the Act—Directions by the Magistrate

to complete performance—Successful directions, if

permitted by the Act. Under s. 35 of the Madras

Planters' Labour Act (I of 1903), the Magistrate

has power to issue successive directions to a mas-

ter labourer to complete the performance of his

contract. *Re Panga Master, I. L. R. 36 Mad.*

497, disapproved from. Successive prosecutions can

be instituted and convictions obtained against a

master in respect of successive defaults made by

him under s. 24, clauses (a), (b) and (c) of the Act.

Umin v. Clarke, L. R. 1 Q. B. 417, and Cutler v. Turner, 9 Q. B. 502, followed. *Whitton v. Alan*

Mad. Master (1915) I. L. R. 39 Mad. 889

MADRAS PORT TRUST ACT (II OF 1905).

bye-law 22—

See Madras City Police Act (III of 1888), s. 75.

I. L. R. 39 Mad. 886

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894).

ss. 5 and 10, cl. (2)—Service zam-

indulments, partition of, whether prohibited—

Alienation, validity of—Subsequent suit for eject-

ment—Transfer of Property Act (IV of 1882), s. 43

—Ancestral property—Property inherited by maternal

grandsons—Interests, nature of. The enfranchise-

ment of a service zamindari under s. 10, cl. (2) of

MAHOMEDAN LAW—GIFT—*contd.*

prolongation of litigation—Cross examination of witnesses. In a. 3 of the Oudh Law Act (XVIII of 1876), which indicates the cases in which among Mahomedans, the Mahomedan Law is to be applied, the word "gifts" includes a gift made to a beneficiary through a trustee. A Mahomedan made a settlement, the parties to which were himself to the first part, his wife of the second part, and his wife and her father of the third part (the trustees), which, after reciting that Rs. 85,000 was due by the settlor to his wife for the balance of her dower, and that it had been agreed between the parties that the settlement should be in full satisfaction of the dower debt, witnessed that for the consideration stated the settlor granted certain properties to the trustees upon trust to pay the net incomes of the properties to his wife for her life and after her death upon trust for all the children of the settlor and his wife "living at the time of his decease." The deed was never executed by the wife, and there was no evidence, independent of the deed, to show that any agreement was ever entered into between the settlor and his wife that she would accept the provision made for her in the settlement in satisfaction and discharge of the unpaid balance of her dower, and she never elected in his life time to take the benefits conferred on her by the deed in lieu of it. *Held*, that the conveyance to the trustees was a purely voluntary gift, and was void by Mahomedan law unless accompanied by a delivery of possession such as the subject of the gift was susceptible of. Subsequent election could not be held to be a substitute for the original consideration. *Chaudhri Mehdi Hasan v. Muhammad Hasan*, 1 L. R. 23 All. 439, 449. L. R. 33 I. A. 63, 76, and *Khajooroonissa v. Nurshan Jehan*, 1 L. R. 2 Cal. 181; 1 L. R. 31 A. 291, followed. The rule of law laid down by those authorities was not altered or qualified by the combined provisions of the Transfer of Property Act (IV of 1882) and the Indian Trusts Act (II of 1882), so as to make registration a substitute for delivery of possession. Both of those Acts were passed long before the first of those authorities was decided. In a suit to enforce a mortgage executed by the widow of the settlor of property dealt with by the settlement. *Held*, that during the life of the donor the evidence did not show that anything was done by him which amounted to delivery of possession of the properties, nor was anything done by the trustees or the wife alone amounting to proof of the acceptance of the gift or of an election to take under the deed. All her conduct and actions were entirely inconsistent with any such intention on her part. The trustees never entered under and by virtue of the trust deed into the receipt of the rent or income of the property comprised in the mortgage, and consequently there was no satisfactory proof that the possession of that portion of the property the subject of the gift was ever delivered by the settlor to the trustees. That being so the gift according to the Mahomedan law was void, and the mortgage sued upon was therefore a valid and binding instrument and

MAHOMEDAN LAW—GIFT—*contd.*

a good security. The statements made in documents signed by the wife, she must be taken to have known the purport and effect of, it being a part of the administrative duties of a quasi-judicial character imposed by the Oudh Land Revenue Act (XVII of 1876), upon the public officials before whom the documents came, to see that she as a *pardanashia* lady had that knowledge, and the maxim "*Omnis presumitur recta*"

the settlor, and was acknowledged by him to be so as the son of *mua* marriage. The Mahomedan law as to acknowledgment laid down in *Muhammad Ali Akbar Khan v. Muhammad Ismail Khan*, 1 L. R. 10 All. 289, and *Muhammad Asmat Ali Khan v. Lali Begum*, 1 L. R. 8 Cal. 422. 1 L. R. 9 I. A. 8, and that as to evidence of repute from statement made in documents by a member of the family in *Anjuman Ara Begum v. Sadik Ali Khan*, 2 Oudh Cases, 115, and *Bagar Ali Khan v. Anjuman Ara Begum*, 1 L. R. 25 All. 236; 1 L. R. 30 I. A. 95, followed. Their Lordships commented upon the long duration of this litigation, remarking that such delays were "discreditable to any judicial system, and there was no reason to think that they were not to a large extent avoidable." Also upon the undue prolongation of the cross-examination of witnesses by breaking it up into detached portions, than which no better system could be devised to expose witnesses to the risk of being tampered with and to promote the fabrication of false evidence. A presiding Judge should endorse with his own hand a statement that a document proved or admitted in evidence was proved against or admitted by the person against whom it was used, as laid down in a. 141 of the Civil Procedure Codes of 1877 and 1882, and practically re-enacted in O. XIII, r. 4, of the rules and orders passed under the Civil Procedure Code, 1908. With a view of insuring on the observance of the wholesome provisions of these statutes, their Lordships will, in order to prevent injustice, to oblige, in future on the hearing of Indian appeals, to refuse to read or permit to be used any document not endorsed in the manner required. *SADIK HUSAIN KHAN v. HAMID ALI KHAN* (1916)

I. L. R. 33 All. 627

MAHOMEDAN LAW—WAKE.

—Funder herself re-enters, if may renounce office and appoint another.—Right of re-entrance in order of succession under original will to see if arises immediately or on death of predecessor.—Limitation.—A material cannot renounce his office except in the presence of the funder of the will, but whether the funder is herself would be void, and the appointment by her of another material would be void at least during her lifetime, and limitation would not be running as against the person next entitled to succeed to the office under the original will until

MAHOMEDAN LAW—WAKF—concl'd.

her death. *ABDUL GHAFOOR MIAN v. HAJI KHUND-
KAR ALTAH HOSAIN* (1915) 20 C. W. N. 605

MAINTENANCE.

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), s. 488.

I. L. R. 39 Mad. 472

See HINDU LAW—MAINTENANCE.

See HINDU LAW—WIDOW.

I. L. R. 39 Mad. 658

charge of—

See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 16 (d).

I. L. R. 40 Bom. 337

of child—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), s. 488.

I. L. R. 39 Mad. 957

of junior members—

See HINDU LAW—MAINTENANCE.

I. L. R. 39 Mad. 396

of members other than the senior
male in a tarwad—

See MALABAR LAW. I. L. R. 39 Mad. 317

suit for—

See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 16 (d).

I. L. R. 40 Bom. 337

MAJORITY ACT (X OF 1875).

See GUARDIANS AND WARDS ACT (VIII
OF 1890), ss. 2, ETC.

I. L. R. 39 Mad. 608

MAKBUZA.

See PRE-EMPTION I. L. R. 38 All. 361

MALABAR LAW.

*Gift to wife or children
or children alone—Presumption—Incidents of tar-
wad property—Right of management in the senior
male—Maintenance of other member's—Right to
partition—Alienation of member's share—Its at-
tachment and sale execution. When properties
are given by a person to his wife and children
or children alone following the Marumakkattayam
law the presumption is that the donees take the
property with the incidents of tarwad property
and the right of management of the properties
forming the subject of the gift is vested in the
senior male member amongst the donees. Persons
subsequently born into the tavazhi are entitled
to be maintained but not to claim partition. Any
one member of a tarwad or a tavazhi cannot
alienate his share nor can it be attached and sold
in execution of a personal decree against any of
the members. Per SRINIVASA AYYANGAR, J.—
It is not the giving of the properties by a person
to his wife and children that constitutes the tar-
wad; but if properties are given to a wife and
children following the Marumakkattayam law,*

MALABAR LAW—concl'd.

they as tavazhi hold those properties with the
incidents of tarwad property and the right of
management of the properties is vested in the
senior male member of the tavazhi. *Kunhacha
Umma v. Kutti Mammi Hajee, I. L. R. 16 Mad.
201*, followed. *CHAKKRA KANNAN v. KUNHI
POKKAR* (1913) I. L. R. 39 Mad. 317

MALABAR TARWAD.

*Karnavan, becoming
a stani—Succeeding karnavan incapable of business
management—Karar vesting management in stani—
Renewal of an otti deed by karnavan, validity of.
Per SESHAGIRI AYYAR J. (NAPIER J. dubitante):
—An arrangement among the members of a Mala-
bar tarwad by which a previous karnavan who
had become a stani was given certain specific
powers of management in respect of the tarwad,
without any express power to obtain renewals of
mortgages in favour of the tarwad, does not de-
prive the actual karnavan, however incapable he
may be, of the power of renewing usufructuary
mortgages in favour of the tarwad. The renewal
being binding on the members of the tarwad, they
cannot set up adverse possession but must submit
to a redemption by the mortgagor. The relation
to the tarwad of a member who had become a
stani discussed. *Chappan Nayar v. Assen Kutti,
I. L. R. 12 Mad. 219*, doubted. *KRISHNAN
KIDAVU v. RAMAN* (1915) I. L. R. 39 Mad. 918*

MALICE.

absence of—

See SECRETARY OF STATE FOR INDIA.

I. L. R. 39 Mad. 781

MALIK-O-QABIZ.

See HINDU LAW—WILL.

I. L. R. 38 All. 446

MANAGEMENT—

of Church—

See CHURCH I. L. R. 39 Mad. 1056

right of—

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 43 Calc. 1085

transfer of—

See TRUSTEES OF A TEMPLE.

I. L. R. 39 Mad. 456

MANAGER.

liability of—

See COSTS I. L. R. 43 Calc. 190

MARRIAGE.

See HINDU LAW—MARRIAGE.

I. L. R. 38 All. 520

dissolution of—

See DIVORCE ACT (IV OF 1869), ss. 3, 16,
37, 44 I. L. R. 40 Bom. 109

of coparcener—

See HINDU LAW—PARTITION.

I. L. R. 39 Mad. 587

MARRIAGE CUSTOM.

See Custom . . . 20 C. W. N. 408

MASTER.

— authority of—

See REVENUE . I. L. R. 43 Calc. 803

MATERNAL UNCLE.

See HINDU LAW—SUCCESSION

I. L. R. 43 Calc. 1

MATHIRI KASUVU AND SADALWAR.

See MADRAS ESTATES LAND ACT (I of 1908), s. 13, cl. (3)

L. L. R. 39 Mad. 84

MAXIMS.

— "generalia specialibus non-derogant"
application of—

See SPECIFIC MOVEABLE PROPERTY

I. L. R. 39 Mad. 1

MEASURE OF DAMAGES.

See DAMAGES I. L. R. 43 Calc. 493

MEMONS.

See SUCCESSION L. R. 43 L. A. 35

MERGER.

See DECREE FOR POSSESSION

I. L. R. 38 All. 509

See LANDLORD AND TENANT

I. L. R. 43 Calc. 164

MESNE PROFITS—

See CIVIL PROCEDURE CODE (1877), s. 563
I. L. R. 38 All. 103

See HINDU LAW—JOINT FAMILY

I. L. R. 39 Mad. 265

See JURISDICTION

I. L. R. 43 Calc. 850

— claim for, by plaintiff from date of deposit—

See TRANSFER OF PROPERTY ACT (1882), s. 63 I. L. R. 39 Mad. 579

MIGRATION.

See SUCCESSION L. R. 43 L. A. 35

MINERALS.

See MINING LEASE.

Minerals, right to—Surface rights and subsoil mineral rights—Distinction between copyholders and tenants of freehold and in England—Construction of the terms "Freehold" and "conditions as to the exercise of the power" in mining lease—Limitation—Adverse possession. Where the mineral rights were never in contemplation of the parties when the lease was granted in 1830 and the lessee never exercised any mineral rights whatsoever barring taking small quantities of coal from the outcrop for domestic purposes and burning lime and the remainder by the lease granted a village containing 340 houses at the abnormally low rent of Rs. 12

MINERALS—contd.

per annum, the presumption made, in the absence of the original document, was that only the surface rights were conveyed to the grantees. In such a case the mines and minerals and the property in the subsoil remained the property and in the possession of the zemindar. The surface rights with their incidents became vested in the grantees as tenure holders. *Hari Narain Singh Deo Bahadur v. Sivram Chuckerbutty*, L. R. 37 I. A. 136; s. c. I. L. R. 37 Calc. 723; 14 C. W. N. 716, and *Durga Prasad Singh v. Braja Nath Bose*, I. L. R. 39 Calc. 696; s. c. 16 C. W. N. 482, cited in *Kunja Behari Seal v. Durga Prasad Singh*, I. L. R. 42 Calc. 346; s. c. 19 C. W. N. 203, referred to. If the mines are presumed to be vested in, and to be the property of the zemindar, his rights must be just the same as those of a fee simple free hold owner of land according to English Law, who makes a grant with an express reservation of the mines to himself together with the incidents that follow therefrom. By reason of that presumption and by reason of the severance of the tenement and the reservation that must be deemed to rise in favour of the Raja, the latter has an incident to his right of property and ownership in the mines the right by implication of law to enter upon the surface of the tenure holder a mouzah for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights. The case of *Prince Mankot Bahadur Shah v. Riaz Dhanamoni*, 2 C. L. J. 20, in so far as it decided that the owner of a limited estate in possession can prevent the grantor or his lessee to work and appropriate the mineral during the existence of such limited estate unless the grantor had expressly reserved the mineral right in his own favour, was wrongly decided by the misapplication of the English Law of copyholds to the case of owners and tenants of freehold land. The distinction between freehold and copyhold law is that under the latter there is no division into strata and the tenant obtains possession of the entire surface and subsoil to the centre of the earth, so that the lord of the manor cannot work the mines unless he proves a right or custom to that effect. It is under only the copyhold law and where there is no reservation of custom proved that a deadlock occurs and neither landlord or tenant can work the mines. Under the law applicable to freehold land there can be no deadlock, for if the mines be excepted the grantor, has an implied right to work them incidental to such exception, if there be no exception then that right is with the grantee as owner of the surface and subsoil. Where a tenant is severed the person in whose favour the reservation is made is the absolute owner of the subsoil and the rights of such a person are that he has by implication of law the power to go upon the surface and do all things reasonably necessary in order to exercise the enjoyment of his property. *Haken Pind v. Aravady* [1877] 1 Ch. 256, and *Fleming v. Llewellyn*, L. R. 1 A. C. 791, referred to. *Hill*, on the construction of a mining lease, that under cl. (3) of Part II of the lease, the lessee had merely power

MORTGAGE—contd.**1. CONSTRUCTION—contd.**

A mortgage was made on the 25th of February, 1866, for a period of six years. It was provided that, if after six years anything remained due to the mortgagees, they might forthwith enter into possession of the mortgaged property and realize the principal and interest. It was further provided that the property would not be transferred, so long as any principal or interest remained due; and that if it was transferred, or if the money due to the mortgagee was not paid the mortgagee, without waiting for the expiry of the six years, might bring a suit for recovery of the principal and interest, and might also get possession "by completion of sale." Nothing at all was paid by the mortgagor in the way of either principal or interest and in 1867 part of the mortgaged property was transferred. Proceedings under s. 8 of Regulation XVII of 1866 were not taken by the mortgagee. In the year 1910, the representative of the mortgagee instituted a suit for foreclosure. Held, on a construction of the mortgage bond in suit, that the cause of action accrued in 1867, and the suit was barred by limitation. *Kishori Mohan Roy v. Ganga Dasi Dobi*, I. L. R. 27 Cal. 229, distinguished. See *Dutt v. Khetter Mohan Singh*, I. L. R. 16 Cal. 691, followed. *Shyama Chander Singh v. Billoo*, 10 All. L. J. 522, and *Rama Prasad Roy v. Bhupai Rai*, 10 All. L. J. 735, referred to. *Ravi Gopal v. Sano Ram Sivan* (1915) I. L. R. 38 All. 97.

2. *Mortgage not fully executed, if creditor is charged with liability to repay, if to be paid from the proceeds of sale of property—Proviso of Property Act (IV of 1882), s. 2, 61, 69, 111.* On the construction of a document which purported to be a mortgage in the case between a creditor and a debtor, by reason of its not being executed as required by s. 29 of the Transfer of Property Act, that the mortgagee did not intend that he should be personally liable to repay the advance and the trial court and the High Court erred in concluding from the evidence that the mortgagee intended that he should be personally liable to repay the advance. It was held that the mortgagee was not personally liable to repay the advance. *20 C. W. N. 209*.

MORTGAGE—contd.**2. CONSTRUCTION—contd.**

dan is not a mortgage. *See* *the Bengal Mortgage Act (1915)* I. L. R. 15 A.

3. CONSTRUCTION—contd.

1. *See* *the Bengal Mortgage Act (1915)* I. L. R. 15 A.

2. *See* *the Bengal Mortgage Act (1915)* I. L. R. 15 A.

3. *See* *the Bengal Mortgage Act (1915)* I. L. R. 15 A.

4. *See* *the Bengal Mortgage Act (1915)* I. L. R. 15 A.

MORTGAGE—*contd.*3 REDEMPTION—*contd.*

some of the co-mortgagors for the redemption of their shares in certain property against the representatives of co-mortgagor, who had redeemed the mortgage, the plaintiffs alleged that the mortgage had been made by one Sukhjit in favour of one Muhammad Hussam in the year of 1913 Sambat. The plaintiffs also relied on certain acknowledgments made by the defendant's predecessor in title. One of these was a *dakhnams* executed by Ram Lal in 1891 which contained a description of the property and was signed by Ram Lal. The defendant contended that there was no mortgage, that he was absolute owner, that the acknowledgments had not been proved and that the suit was time barred. It was held by the lower Appellate Court that the date of the mortgage had not been proved, but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to recover. *Held*, that the rule of limitation governing a suit of this kind was that laid down in *Iskuf Alam v. Wazir Ali*, 1 L. R. 11 All 223, viz., that Art. 113 of Schedule I to the Limitation Act applied, that is the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due and the burden was upon the plaintiffs of proving the mortgage that they had set up, and that it was for them to prove that the acknowledgment relied upon by them is contained in the *dakhnams* had been made at a date within the period of limitation. *Held*, further that the acknowledgments contained in the *dakhnams* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s. 19 of the Limitation Act. *Dharam Pal v. Govind Sainikar*, 1 L. R. 8 Bom. 93, referred to. *Kurita Ram v. Tark Ram* (1916) 1 L. R. 38 All. 510.

4 SALE OF MORTGAGED PROPERTY

1. — *Sale of mortgaged property*—Purchase money "left with the purchaser for payment to the mortgagee"—*Nature of this transaction*—Trust. Where a mortgagor sells the mortgaged property and, as it is commonly expressed, leaves part of the price with the purchaser for payment to the mortgagee, the transaction is merely one of sale subject to the mortgage. No trust is created in the purchaser for payment of the portion of the price "left with him" to the mortgagee. *Janta Das v. Ram Vatan Pandey* (1916) 1 L. R. 38 All. 209.

2. — *Mortgage by two persons of two properties for a single debt*—Payment by one his portion—*Suit against other for the balance*—Transfer of Property Act (IV of 1952), s. 67. There is nothing in the provisions of the Transfer of Property Act to support the view that as between a mortgagee and the holders of equity of redemption the mortgagee is bound to distribute his debt ratably on the mortgaged prop-

MORTGAGE—*contd.*4 SALE OF MORTGAGED PROPERTY—*contd.*

erties. *Krishna Jygar v. Muthulakshmaraya Pillai*, 1 L. R. 29 Mad. 217, followed. Where, therefore, the plaintiff sued the defendant one of the mortgagors, for the recovery of the balance of mortgage money due under a deed of mortgage, without joining the other mortgagor. *Held*, that the plaintiff was entitled to a decree for a sale of the plaintiff mentioned properties for the whole of the balance due on the mortgage. *K. K. KATA SUBBA REDDI v. BAGIAMMAL* (1914) 1 L. R. 39 Mad. 419.

3. — *Mortgage by two out of three brothers, members of joint Hindu family*—Death of one executant—*Suit against other executant and the non-executing brother only as representing the deceased executant*—*Ex parte decree and sale in execution and purchase by mortgagee*—*Non-executing brother's original share, if passed by the sale*—*Decree for joint possession if can be made*—*Transfer of Property Act (IV of 1952)*, s. 11. Delivery of symbolical possession is operative against the judgment-debtor who from that date becomes a trespasser, and the remedy of the decree holder who has failed to get actual possession is by suit. Where A and B, two out of three brothers A, B and C, members of a joint *mitakshara* family, executed a mortgage of their whole property, and the mortgagee on the death of A sued to enforce the mortgage against B as mortgagor and also as the legal representative of A and against C, describing him only as a legal representative. *Held*, that the decree and the sale could not affect C's original one-third share in the mortgaged property since the question of the validity of the mortgage as against C who was not a party thereto could not be raised and decided in the mortgage suit. That in a suit by the purchaser to recover the property, C was not barred from raising the question by the doctrine of constructive *res judicata*. That the plaintiff as purchaser of an undivided two-thirds share in lands used as residence by a joint Hindu family could not be given a decree for joint possession, regard being had to s. 41 of the Transfer of Property Act. That the proper course to follow is either to direct delivery of possession by partition in execution proceedings or to leave the purchaser to his remedy by a separate suit for partition. *Girija Kanya Chakrabarti v. Mohini Chandra Chakravarti* (1915) 20 C. W. N. 675.

5 SECURITY

Equitable mortgage—*Tithe deeds, deposited as a security, and endorsement made on promissory note given*—*Tithe was subsequently made to mortgagee alone and not to mortgagee*—*Scope of security limited to original mortgagee*. Where tithe deeds of property are handed over with nothing and except that there are to be security, the law supposes that the scope of the security is the scope of the title deeds. Where, however, tithe deeds are handed over accompanied

MUNICIPAL LAW.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), s. 42.

I. L. R. 40 Bom. 166

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115. I. L. R. 40 Bom. 509

1. ————— *Removal of structures—Compensation—Declaration—Specific Relief Act (I of 1877), s. 42—Calcutta Municipal Act (Beng. III of 1899), ss. 311, 617.* Upon the Corporation of Calcutta giving notice under the Calcutta Municipal Act, 1899, s. 341, to the owner of a building requiring him to remove a fixture attached thereto so as to project over, incroach on, or obstruct any public street or land, the payment of compensation, provided for in the case of a fixture, erected before June 1, 1863, is not a condition precedent to its removal or its demolition under s. 450, sub-s. (1); the compensation is assessable by the Court of Small Causes under s. 617, and not in a suit. If, however, the Corporation declines to admit the owner's right to compensation, a Subordinate Judge has a discretionary power under the Specific Relief Act, 1877, s. 42, to make a declaration that the fixture was erected before June 1, 1863, and that the owner was entitled to compensation. JOSEPH V. CALCUTTA CORPORATION. I. L. R. 43 I. A. 243

2. ————— *Roads which vest in the Municipality—Public, when they have a right to go over private pathway—Difference between roads vested in the Municipality and others as regards Municipality's rights—Bengal Municipal Act (Beng. III of 1884), ss. 30, 31.* Under s. 30 of the Bengal Municipal Act as amended by recent legislation, private pathways do not vest in the Municipality. *Chairman of the Howrah Municipality v. Khetra Krishna Mitter*, I. L. R. 33 Calc. 1290, followed. *Kumud Bandhu Das Gupta v. Kishori Lal Goswami*, (1911) S. A. Nos. 188 and 838 of 1909 (unrep.), and *Kamal Kamini Debi v. Chairman, Howrah Municipality*, (1909) S. A. No. 2134 of 1907 (unrep.), dissented from. The Municipality may, however, have control over such a pathway, if the public have a right to go over it, as provided for in s. 31 of the Bengal Municipal Act. The difference between roads vested in the Municipality and other roads is that in the former case the Municipality is responsible for lighting, watering, sewerage and clearing the roads, and in the other case, the Municipality has only the power of control to prevent the road from becoming a nuisance, or the rights of the public from being interfered with. CHAIRMAN, HOWRAH MUNICIPALITY V. HARIDAS DATTA (1915)

I. L. R. 43 Calc. 130

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913).

s. 3—

See WAKF, VALIDITY OF.

I. L. R. 43 Calc. 158

MUTAWALLI.

See WAKF. I. L. R. 43 Calc. 467

MUTH.

nature, object and custom of—

See HINDU LAW—ENDOWMENT.

I. L. R. 43 Calc. 707

N**NATURAL SON.**

See HINDU LAW—STRIDHAN

I. L. R. 43 Calc. 944

NEGLIGENCE.

See MORTGAGE. I. L. R. 43 Calc. 1052

of servants of Public Works Department—

See TORT. I. L. R. 39 Mad. 351.

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—

ss. 28, 30—

See PROMISSORY NOTE BY GUARDIAN OF MINOR. I. L. R. 39 Mad., 915

ss. 30, 47, 59, 74, 94—

Hundi, payable to bearer—Surety—Contract of suretyship only between surety and creditor—Right of surety against principal debtor—Indian Contract Act (IX of 1872), ss. 126, 140, 141, 145, 69 and 70—Right of holder, not being holder in due course—Delivery of hundi payable to bearer, effect of—Holder, right of. A person who becomes a surety without the concurrence thereto of the principal debtor, gets as against the latter, only the rights given by ss. 140 and 141 of the Indian Contract Act (IX of 1872) and not those given by s. 145. Such a person cannot invoke in his favour the aid of ss. 69 and 70 of the Act. *Hodgson v. Shaw*, 3 My. K. 183, referred to. A person obtaining by payment, after dishonour by the drawee, delivery of a negotiable instrument payable to bearer, acquires the rights of a holder thereof and can, under s. 59 of the Negotiable Instruments Act (XXVI of 1881), recover from the drawer, the amount due thereon, on proof of presentment and notice of dishonour as required by ss. 74, 30 and 94 of the Act. *Gajapathy Kistna Chandra Deo v. Srinivasa Charlu*, Appeal No. 25 of 1909, referred to. *Nanak Ram v. Mehin Lal*, I. L. R. 1 All. 487, distinguished. MUTHU RAMAN V. CHINNA VELAYAM (1916) I. L. R. 39 Mad. 965

NEWSPAPER.

copies of, forfeiture of—

See PRESS ACT (I OF 1900), ss. 3 (1), 4 (1), 17, 19, 20, 22.

I. L. R. 39 Mad. 185

NEXT FRIEND.

See COSTS. I. L. R. 43 Calc. 67

NOABAD TALUK.

— *Khas Mehal-Taluk*,
a tenure—Non permanent taluk—Sale for arrears of
revenue—Purchaser's title—Berg Act VII of 1863,
s. 12—Cause of action. A Noabad taluk is a tenure,
the land being khas mehal land of Government.
Where it was found that the tenure in question was

STATE FOR INDIA (1916) . 20 C. W. N. 038

NON-COMPOUNDABLE OFFENCE.

— *Conveyance executed in
consideration of complainant withdrawing prosecu-
tion. Suit to set aside same after prosecution
withdrawn if lusa.* BINDSANT PRASAD v. LAKH-
NAR SAINI (1916) . 20 C. W. N. 760

NON-OCCUPANCY RAIYAT.

— *Holding over after term,
if holds on from year to year—Ejectment.* Under
the Bengal Tenancy Act there is no raiyat who
holds from year to year and if the tenant is a
non-occupancy raiyat who does not hold under a
khas for a term, he cannot be ejected under the
provisions of cl (c) of s. 44. JOTIRAM KHAN v.
JUSAKI NATH GHOSH (1914)

20 C. W. N. 258

NON-TRANSFERABLE HOLDING.

— *Non transferable rai-
yati holding—Sale in execution of money decree—
Purchaser allowed by raiyat to take a portion of the
holding—Surrender by raiyat of whole holding—
Raiyat continuing in occupation—Purchaser if may
be ejected.* Where a purchaser (in execution of a
money decree) of a non transferable raiyati hold-
ing being resisted by the raiyat, by arrangement
with the latter, was given a portion of the hold-
ing, the raiyat retaining the rest, and subse-
quently the raiyat expressly surrendered the whole
holding to his landlord, though it appeared that
even after such surrender he went on occupying
the portion retained by him under the arrangement.
That the surrender being obviously illusory, the
original tenancy subsisted and protected the pur-
chaser from ejectment by the landlord. DORO
KISHORE SAMA v. DHANANJOY SAMI (1916)

20 C. W. N. 610

NON-TRANSFERABLE OCCUPANCY HOLD-
ING.

See LANDLORD AND TENANT

L. L. R. 43 Calc. 878

NORTH-WESTERN PROVINCES ACTS.

See UNITED PROVINCES AND OUDH ACTS.

NORTH-WESTERN PROVINCES AND OUDH
MUNICIPALITIES ACT (X OF 1900).

s. 132—Breach of rule made under
cl. (c) of s. 131—Notice. In order to render a

NORTH-WESTERN PROVINCES AND OUDH
MUNICIPALITIES ACT (X OF 1900)—contd.

s. 132—contd.

person liable to punishment for breach of a rule
made under cl. (c) of s. 130 of the Municipalities
Act (Local I of 1900), by reason of the continuance
of sale or exposure for sale of certain specified
article upon any premises which were at the time
of the making of such rules used for such purpose,
it is necessary that six months' notice in writing
should have been served upon him in the manner
provided by law, and conviction in the absence
of such notice is bad in law. EMPEROR v. GHAM-
MAY (1916) . L. L. R. 38 All. 455

NORTH-WESTERN PROVINCES LAND
REVENUE ACT (XIX OF 1873)—

s. 205B—

See OLD LAND REVENUE ACT (XVII of
1876), ss. 173, 174

L. L. R. 38 All. 271

NOTICE.

See CIVIL PROCEDURE CODE (ACT V of
1908) s. 97 L. L. R. 40 Bom. 541

See CONSTRUCTIVE NOTICE.

See N. W. P. AND OUDH MUNICIPALITIES
ACT (X OF 1900), s. 132.

L. L. R. 38 All. 455

See NOTICE OF SUIT

See NOTICE TO QUIT

See REVIEW L. L. R. 43 Calc. 178

See REVIEW L. L. R. 43 Calc. 803

See TRANSFER OF PROPERTY ACT (IV of
1882), s. 40 L. L. R. 40 Bom. 498

See WASTE LANDS.

L. R. 43 L. A. 303

NOTICE OF SUIT.

See CIVIL PROCEDURE CODE (ACT V of
1908), s. 80 f. L. R. 40 Bom. 392

NOTICE TO QUIT.

See LANDLORD AND TENANT

L. L. R. 43 Calc. 164

NOTIFICATION OF PAYMENT.

See EXECUTION OF DECREE

L. L. R. 43 Calc. 207

NUISANCE.

— *Legal nuisance—Erec-
tion of horse stables, when a nuisance—Lawyer's
Act (V of 1913), s. 15—Deposits of nuisance—Value
of expert medical evidence in a case of nuisance—
Consideration of policy or abstract public rights,
outside the scope of inquiry—Liability from the
Municipal Sanitary authorities for erection of
stables, no defence in an action for nuisance.
Specific Relief Act (I of 1922)—Infringement
as well as damages—Nuisance being as trespass
interfered in recreation and as nuisance—Civil
Procedure Code (Act V of 1908), O. I, r. 1. Prior
to the year 1903, the first plaintiff was alone liable*

NUISANCE—*contd.*

entitled to, and possessed of, a piece of land with a house standing thereon situate at Thakurdwar Road, Bombay. By an Indenture of Settlement, dated the 12th of January 1903, the first plaintiff conveyed the said property to herself and her husband, the second plaintiff, upon trusts for the benefit of herself and her husband and their issue. The defendant was the lessee for a period of 21 years commencing from 1st of January 1911, of an open piece of land adjoining the property of the plaintiffs and situate on the eastern side thereof. The said piece of land was formerly used for many years, and, as the defendant alleged, for nearly a century, for tethering bullocks and keeping bullock carts, up to the year 1908 when such user terminated. In October 1913, the defendant erected a block of stables, parallel to the length of the plaintiff's house and at a distance of about 20 to 35 feet therefrom for the accommodation of 75 horses, to which was added another block for the accommodation of 35 hack carriages. The plaintiffs complained that the stables erected by the defendant rendered their house uncomfortable and unhealthy and constituted a serious nuisance. They also alleged that in consequence of the nuisance, the tenant on the first floor vacated the same and that the plaintiffs and their family suffered in health and were obliged to remove to another house. The plaintiffs sued in their double capacity as trustees interested in the reversion and as actual residents, praying for a perpetual injunction to restrain the defendant from the continuance or repetition of the said nuisance and for damages in the sum of Rs. 1,221 for nuisance caused upto the date of the suit, or in the alternative for a sum of Rs. 15,000 as damages for the depreciation in value of the plaintiff's property, by reason of the said nuisance. The defendant denied that the stables were a nuisance in law and pleaded without prejudice to his aforesaid contention—(a) that the nuisance complained of had been acquired by him as an easement, (b) that the stables were erected in accordance with the Byc-laws of the Bombay Municipality, and the license of using them as stables was granted to him after the said premises were inspected and due inquiries made by the Municipal Commissioner and the Health Officer of Bombay, and (c) that the plaintiffs were not entitled to sue in their double capacity. *Held*, (i) that under the Indian Easements Act, whatever easement may have been acquired by the owners of the land to cause a nuisance to the adjacent servient tenement by the tethering of bullocks on the vacant land admittedly came to an end in the year 1908, i.e., considerably more than two years before the nuisance complained of came into existence and before the date of the suit; (ii) that the nuisance complained of by the plaintiffs was totally different from the nuisance which previously existed, and on general principle, the defence of easement could not be sustained; (iii) that if the nuisance existed, it was no answer to say that the defendant had conformed to the latest requirements of the Municipal Sanitary authorities, and had done

NUISANCE—*concl'd.*

everything in his power and taken all reasonable precautions to prevent its existence; (iv) that the stables erected by the defendant, having regard to their size and their distance from their dwelling house of the plaintiffs constituted a nuisance; (v) that having regard to the comprehensive language of O. I, r. 1 of the Civil Procedure Code of 1908, there could not be any objection to the plaintiffs suing in their double capacity, and that the plaintiffs were entitled to obtain relief by way of injunction and damages. A legal nuisance is rather an evasive shifting and intangible thing hard to be pinned down by a verbal definition. It must always be conditioned by time and place and circumstances and the Court shall have regard to the station in life of the plaintiff and his family, and the locality and the nature of the nuisance complained of. *Waller v. Selfe*, 4 De G. & Sm. 315, 322, and *Sturges v. Bridgman*, 11 Ch. D. 852, referred to. Where the nuisance was of the kind to injure the health or seriously imperil the life of those complaining of it, the Court would not hesitate to prevent it by way of injunction; but where the nuisance went no further than to diminish the comforts of human life, there would always be a question whether the Court would proceed against him who causes that nuisance by injunction, or compensate the sufferer in damages. In the absence of statutory enactments, no general considerations of mere policy, or rather abstract public rights, can be allowed to prevail against what the law recognises, and always has recognised, as the legal rights of the individual. *The Attorney-General v. The Town Council of the Borough of Birmingham*, 6 W. R. 811, referred to. *BAI BHICAJI v. PEROJSHAW JIVANJI* (1915)

I. L. R. 40 Bom. 401

O**OATH.**

See OATHS ACT (X OF 1873), ss. 5, 6, 13.
I. L. R. 38 All. 49

OATHS ACT (X OF 1873).

ss. 5, 6, 13—*Evidence Act (I of 1872), s. 118—Evidence—Statement of witness not recorded on oath—Capacity of child of tender years to testify.* The fact that a Court has advisedly refrained from administering an oath to a witness is not sufficient by itself to render the statement of such witness inadmissible. But a Court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the Court thereof, and if the Court is so satisfied it is best that the Court should comply with the provisions of s. 6 of the Indian Oaths Act, in the case of a child, just as in the case of any other witness. *Queen-Empress v. Maru*, I. L. R. 16 All. 207, dis-sented from. *EMPEROR v. DHANI RAM* (1915)

I. L. R. 38 All. 49

OATHS ACT (X OF 1873)—concld

ss. 8, 9, 10—Principal and agent
 —Agent holding power of attorney to conduct suit for principal—Power of agent to agree to suit being decided according to statement on oath of defendant.
 A lady who was plaintiff in a suit gave to her husband a special power of attorney to conduct the case in her behalf "as he should deem fit." He was authorized to compromise or withdraw the suit, to refer it to arbitration and to nominate arbitrators, and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself. *Held*, that the husband had power to take action under ss. 8, 9, and 10 of the Oaths Act, 1873. *Sadasahu Raygari v Maruti Lalal*, 1 L. R. 14 Bom 433 dissented from. *Wasi Uzzaman Khan v Faiza Bibi* (1915) 1 L. R. 38 All. 131

OCCUPANCY-HOLDING

See AGRA TENANCY ACT (II OF 1901),
 s. 23 1 L. R. 38 All. 325

See OCCUPANCY RIGHT

—transfer of part of—

See LANDLORD AND TENANT
 1 L. R. 43 Cal. 378

1. —Non transferable occupancy holding—Purchaser of share, rights of, as to possession against landlord. Plaintiffs Nos. 2 and 3 were tenants in respect of one half only of an occupancy holding which was not transferable and the plaintiff No. 1 purchased their interest. *Held*, that the plaintiff as purchaser of a share of an occupancy holding was entitled to possession even as against the landlord who had no right to take possession of the property. *Purna Chandra Thivedi v Chandra Mohini Das* (1916) 20 C. W. N. 586

2. —Non transferable occupancy holding—Sale by landlord in execution of rent decree, under Civil Procedure Code, procured by deposit by purchaser from registered tenant—Withdrawal of deposit by landlord, if amounts to recognition of purchaser as tenant. Prior to the passing of the Bengal Tenancy (Amendment) Act of 1907, a co-sharer landlord obtained a decree for rent against the registered tenant of a non transferable occupancy holding in favour of himself and his other co-sharer. He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act. The plaintiff had purchased the holding in execution of a money-decree against the registered tenant deposited the decretal amount in Court for payment to the decree-holder landlord, appearing in his petition that he had acquired a right to the holding by purchase and that he made the deposit to protect his right and to recover his title. He realised the amount deposited by him from the other co-sharer tenant or his heir as the tenants of the holding. The decree was thereupon treated as satisfied and the attachment was withdrawn, and the amount deposited was withdrawn by the landlord. *Held*,

OCCUPANCY HOLDING—c. contd

that upon such deposit, the landlord could not as in a case under the Bengal Tenancy Act, contest the right of the purchaser to make the deposit, and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord. *Thomas Barclay v Syed Hossein Ali Khan*, 6 C. L. J. 601, and *Sahib Bihary Raj v Fulmani Dasi*, 14 C. L. J. 358, 359, distinguished. *SURENDRA NARAIN MAHATA v JUDAL KISHORE GHOSH* (1916) 20 C. W. N. 849

OCCUPANCY RIGHT.

See LANDLORD AND TENANT

1 L. R. 43 Cal. 164

See LANDLORD AND TENANT—OCCUPANCY RIGHT

See OCCUPANCY HOLDING

—acquisition of, by landholder.

See MADRAS ESTATES LAND ACT (I OF 1905), s. 6, sub s. (5) AND s. 8

1 L. R. 39 Mad. 944

—Incidents of another tenancy under the same landlord but in different localities in the occupation of the occupancy raiyat—Bengal Tenancy Act (VIII of 1885), s. 152. The provisions of the Bengal Tenancy Act are applicable to a tenancy for building a shop in a market in which the tenant afterwards came to reside, where the tenant has occupancy right on certain jamas under the same landlord in a different village from before the acquisition of the tenancy for building the shop. *Gulam Mouda v Abdul Soveer Mondul*, 13 C. L. J. 255, *Pratap Chandra Das v Biswanath Pramanick*, 9 C. W. N. 416, *Kripa Nath Chakravarty v Sheikh Anw*, 10 C. W. N. 911, and *Harinar Chatterji v Dinu Bera*, 14 C. L. J. 170, referred to. *BIKASHIRAM BHAGAT v MAHARAJ BHADUR SINGH* (1915) 1 L. R. 43 Cal. 195

OFFENCE.

—committed in respect of different persons—

See JOURNAL OF CASES.

1 L. R. 38 All. 457

—compounding of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 315.

1 L. R. 39 Mad. 946

OFFERINGS TO A TEMPLE.

Transferability—Transfer of Property Act (II of 1902), s. 6, cl. (c). There are certain rights that cannot be transferred. They are *res extra commercium*; for instance, sacerdotal office which belongs to the priest of a particular class. Similarly a right to receive offerings from pilgrims, resorting to a temple or shrine is inalienable. The chance that future worshippers will give offerings is a mere possibility and as such it cannot be transferred. *Sahib Manohar Naidu v Hanumanth*, 1 L. R. 26

OFFERINGS TO A TEMPLE—*concl.*

Mad. 31; Kashi Chandra v. Kailash Chandra, I. L. R. 26 Calc. 356; Dino Nath Chuckerbutty v. Pratap Chandra Goswami, I. L. R. 27 Calc. 30, referred to. PUNCHA THAKUR v. BYNDESWARI THAKUR (1915) . . . I. L. R. 43 Calc. 28

OFFICIAL ASSIGNEE.

See LIQUIDATOR I. L. R. 43 Calc. 586

right of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5.

I. L. R. 39 Mad. 903

OFFICIAL CORRUPTION.

See CONTRACT . I. L. R. 43 Calc. 115

OFFICIAL RECEIVER.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 20 AND 22.

I. L. R. 39 Mad. 479

See RECEIVER.

order to, without notice—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 46, CL. (3).

I. L. R. 39 Mad. 593

ONUS.

See PRESS ACT (I OF 1910), ss. 3 (1), 4 (1), 17, 19, 20 AND 22.

I. L. R. 39 Mad. 1085

ONUS OF PROOF.

See LEGAL NECESSITY.

I. L. R. 43 Calc. 417

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 140, 141 I. L. R. 40 Bom. 239

See RENT, SUIT FOR.

I. L. R. 43 Calc. 554

OPIUM ACT (I OF 1878).

s. 9 (c).—*Illicit possession of opium—Possession of substance unfit for use as opium and containing only traces of opium.* The accused were convicted under s. 9 (c) of the Opium Act for being in illicit possession of two and a half seers of opium. The substance seized from the possession of the accused was, on chemical analysis, found to contain traces of opium amounting to less than one per cent. and to be unfit for use as opium. There was no evidence as to whether the traces of opium could be extracted from the mass and used as opium: *Held*, that the conviction could not be sustained. *MAHOMED KAZI v. KING-EMPEROR (1916) . . . 20 C. W. N. 1266*

s. 15.

See RESCUE FROM LAWFUL CUSTODY.

I. L. R. 43 Calc. 1161

ORDER ABSOLUTE.

application for—

See MORTGAGE DECREE.

I. L. R. 39 Mad. 544

OTTI-DEED.

See MALABAR TARWAD.

I. L. R. 39 Mad. 918

ODUH ESTATES ACT (I OF 1869).

ss. 8, 10—

Sanad granted by Government and death of grantee before Act passed into law—Status and rights of grantee—Name of grantee entered in lists 1 and 2 after his death—Descent by primogeniture—Custom of descent of non-taluqdari property acquired by taluqdar, a Mahomedan—Burden of proof—Presumption of pre-existing custom—Wajib-ul-arzes, value of. On the 17th of October, 1861, J, a Mahomedan and the ancestor of the parties to this appeal, received from the British Government a *sanad* conferring on him the full proprietary right, title and possession of the taluqa of Deogaon, with a condition that in the event "of you or any of your successors dying intestate, the estate shall descend to the nearest male heir, i.e., sons, nephews, etc., according to the rule of primogeniture" He d'd in 1865, but his name was entered in lists 1 and 2 of those prepared under s. 3 of the Oudh Estates Act (I of 1869). *Held*, that J had acquired, as declared by s. 3 of the Act, a "permanent, heritable and transferable right" in his estate, and was unquestionably a "taluqdar" within the meaning of the Act. His death before the Act was passed into the law made no difference in his status or in his rights. The provision in s. 8, that the lists should be prepared "within six months after the passing of the Act," was clearly meant as a limit for their completion, and not for their initiation. Descent by primogeniture was not confined to cases coming under list 3. The provision in s. 10 that "the Courts shall take judicial notice of the said list and shall regard them as conclusive evidence that the persons named therein are taluqdars" does not mean that they shall be conclusive merely as to the fact that the persons entered therein are taluqdars as entered in s. 2, but also that the Courts shall regard the insertion of the names in those lists as "conclusive evidence" of the fact on which is based the status assigned to the persons named in the different lists. *Achal Ram v. Udai Pratap Addiya Dat Singh, I. L. R. 10 Calc. 511; L. R. 11 I. A. 1, and Thakur Ishri Singh v. Thakur Baldeo Singh, I. L. R. 10 Calc. 792; L. R. 11 I. A. 135, discussed and explained.* J's name could therefore only have been included in list 2 by virtue of a pre-existing custom governing the devolution of the estate to a single heir; and s. 10 made that entry conclusive evidence of that fact. The present suit related to property acquired by the son of J who succeeded him, which, it was contended by the appellant (plaintiff), descended not by the custom of lineal primogeniture set up by the respondent (defendant) but in accordance with the ordinary Mahomedan law. *Held*, that the provision as to conclusiveness in s. 10 is confined to estates "within the meaning of the Act," and does not apply to non-taluqdari property, but the exist-

ODDH ESTATES ACT (I OF 1869)—*concl'd.*

ss. 8, 10—*concl'd.*

ence of the pre-existing custom gives rise to a presumption in the case of a family governed by Mahomedan law, which makes no distinction between ancestral and self-acquired property, that if a custom governs the succession to the taluqa, it attaches also to the personal acquisitions of the last owner left by him on his death, and it is for the person who asserts that these properties follow a line of devolution different from that of the taluqa to establish it. *Janki Prasad Singh v. Dwarika Prasad Singh*, 1 L. R. 35 All 391, L. R. 40 I. A. 179, *Maharajah Partab Narain Singh v. Maharajah Subhao Koor*, 1 L. R. 3 Cal. 621; L. R. 4 I. A. 228, and *Parbati Kumari Devi v. Jagadul Chunder Dhabal*, 1 L. R. 29 Cal. 437, L. R. 29 I. A. 82, distinguished as being cases governed by the Hindu law of the Mitakshara, which recognizes different courses of devolution for ancestral and self-acquired properties. Wajid ul arza which merely narrated traditions and purported to give the history of devolutions in certain families, not even of the narrator, were held to be not sufficient to rebut the presumption of pre-existing custom. *Murtaza Hussain Khan v. Muhammad Yasin Khan* (1910)

1 L. R. 38 All 522

ODDH LAND REVENUE ACT (XVII OF 1876).

ss. 173, 174—Contract entered into by disqualified proprietor creating charge on his property while under superintendence of Court of Wards—Validity of property in execution of decree obtained in respect of such contract after property has been released—N. W. P. Land Revenue Act (XIX of 1873), s. 205B, as amended by United Provinces Court of Wards Act (III of 1899) s. 174 of the Ouddh Land Revenue Act (XVII of 1876) inacts, with respect of persons whose property is under the superintendence of the Court of Wards, that, "no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence." Held, that the phrase, "while his property is under such superintendence" was anterior to and conclusive of the verbal expression, "contract entered into by such person." Where, therefore, a contract has been made during such period of time, the effect of the section is to protect the property against attachment in execution of the decree, even after the property has been released from superintendence of the Court of Wards. The decision to the contrary in *Rameshwar Prasad Singh v. Bhagyalal Das*, 11 Ouddh Cases 6, overruled. *Devi Bakshi Singh v. Dhabal Lal* (1910) 1 L. R. 38 All 271

P

PAIK.

suit to eject—

See REMAND . . . 1 L. R. 43 Cal. 1101

PARTIES.

addition of—

See REMAND . . . 1 L. R.

—*all*—privily between—

See CIVIL PROCEDURE CODE (1908), s. 11 . . . 1 L. R. 40 Cal. 23, 24

rights of—

See LEASE . . . 1 L. R. 43 Cal. 332

PARTITION.

See CIVIL PROCEDURE CODE (1908), O II, r. 2 . . . 1 L. R. 38 All 217

See DECREE . . . 1 L. R. 40 Bom. 118

See HINDI LAW—JOINT FAMILY.
1 L. R. 43 Cal. 1031
1 L. R. 39 Mad. 159

See HINDU LAW—PARTITION.

See UNITED PROVINCES LAND REVENUE ACT (III of 1901), ss. 110, 111, 112
1 L. R. 38 All 115

See PARTITION BY COLLECTOR.

See U P LAND REVENUE ACT (III of 1901), s. 111 (f) (b)
1 L. R. 38 All 70

See U P LAND REVENUE ACT (III of 1901), ss. 111, 112, 233 (d).
1 L. R. 38 All 302

See U P LAND REVENUE ACT (III of 1901), s. 233, cl. (d)
1 L. R. 38 All 243

right to—

See HINDU LAW—PARTITION.
1 L. R. 43 Cal. 1118

See MALABAR LAW
1 L. R. 39 Mad. 317

suit for—

See BENAMIDAR . . . 1 L. R. 43 Cal. 504

1. Partition and, costs in, before preliminary decree when defendant successfully contests plaintiff's claim for partition. That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the date of the preliminary decree the plaintiff in this case pays the costs of the defendants who have successfully contested his claim for partition. *LUKE NATHU SINGH v. BHAKHTWAR PRASAD NATAYAN SINGH* (1914).
20 C. W. N. 51

2. Partition, and for, by co-sharer—And if in immediate and bona fide effect of constructive possession—Possession by co-sharer of and when may be adverse—Evidence necessary to establish adverse possession by co-sharer—Order of co-sharer how may be effected to create adverse possession—Land Registration Act, registration of name under effect of, if he merely implies possession—Partition as distinguished from ejectment—Costs in partition and before preliminary

PARTITION—contd.

decree when defendant successfully contests plaintiff's claim for partition. The plaintiff sought partition of estate of which he claimed to own an one ^{1/2} share. He alleged that after purchase. He alleged that after purchase. He alleged that after purchase.

OFFICIAL ACT in place of his vendor and was in possession since the date of his purchase. The lower Court found that the plaintiff was in possession of his share and made a preliminary decree for partition. The defendants appealed. *Held*, that although as a general rule the possession of one co-tenant is not deemed adverse to the other co-tenants the existence of the relation of co-tenancy does not preclude one co-tenant from establishing an adverse possession in fact as against the other co-tenants; and though the co-tenant enters in the first instance without claiming adversely his possession afterwards may become adverse. In order to render the possession of one co-tenant adverse to the others not only must the occupancy be under an exclusive claim of ownership in denial of the rights of the other co-tenants, but such occupancy must have been made known to the other co-tenants either by express notice or by such open and notorious acts as must have brought home to the other co-tenants knowledge of the denial of their rights. The evidence to show adverse possession by one co-tenant must be much clearer than between strangers to the title and the hostile intent of the co-tenant in possession must be shown by unequivocal conduct. The ouster of the other co-tenants in order to render the possession adverse need not be by violent or intimidating expulsion or repulsion; nor need notice of the adverse holding be actually brought home to the other co-tenant by personal or formal communication, but it is sufficient, if the contrary is not proved, that the circumstances show that such knowledge may reasonably be presumed. *Held*, that the registration of the name of a person under the Land Registration Act is some evidence of possession but the weight to be attached to this fact must depend upon the circumstances of each case. The fact that the plaintiff was able to get his name substituted in the place of his vendor does not necessarily show that he is in possession of any share of the estate. That the plaintiff having failed to prove that he had possession actual or constructive of any share of the disputed property was not entitled to maintain a suit for partition. That the remedy of the plaintiff was by a suit for joint possession and partition and on the plaint in a suit so framed court-fees must be paid *ad valorem*. That partition is not a substitute for ejectment because partition implies an existing joint possession and enjoyment to be converted into possession in severalty. That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the stage of the preliminary decree, the plaintiff must in this case pay the costs of the defendants who have successfully contested his claim for partition. **LOKE NATH SINGH v. DHAKESHWAR PROSAD NARAIN SINGH (1914) 20 C. W. N. 51**

PARTITION—contd.

3. *Partition, suit for, if maintainable by a lessee of mining rights for a term against lessor's co-owners—Partition of underground mines and minerals, if possible—Partition Act (IV of 1893), s. 2.* According to the English authorities, it is clear that a lessee for a term of years must maintain a claim for partition. There is no reason for holding that a different rule prevails in India. The authority of *Mukunda Lal Pal Chaudhuri v. Lekurauz*, I. L. R. 20 Cal. 379, has been much shaken by the decision of the Full Bench in *Hemadri Nath Khan v. Ramani Kanta Roy*, I. L. R. 24 Cal. 575, 581: s. c. 1 C. W. N. 406; *Heaton v. Dearden*, 16 Beav. 147, *Bhagwat Sahai v. Bepin Behari Mitter*, I. L. R. 37 Cal. 918: s. c. 14 C. W. N. 962, and *Baring v. Nash*, 1 V. & B. 551, referred to. There may be no special difficulty in effecting a partition of the underground mines and minerals, but in case any such difficulty arises, the power to order a sale under s. 2 of the Partition Act of 1893 may be exercised. **LALIT KISHORE MITRA v. THAKUR GIRDHARI SINGH (1916) 20 C. W. N. 1306**

4. *Partition suit—Issue between co-defendants—Previous partition suit instituted by third parties against present defendants and the vendor of the plaintiff—Issue regarding the share of the plaintiff's vendor being subject to other defendants' mokurari raised but expunged—Final decree in the previous partition suit passed on the basis of the mukurari interest and allocation made thereunder—Bar of res judicata to present suit—Explanation IV of s. 11, Civil Procedure Code (Act V of 1908).* In a previous partition suit instituted by Y against the present plaintiff's vendor T and the present defendants, an issue was raised as to the share of T being subject to the mokurari interest of the other defendants but was expunged by the order of the Court. But when the partition was actually carried into effect the present defendants were allotted possession not only of their proprietary share but also the mokurari of the share which they claimed to hold under the daughter of T. In a subsequent partition suit instituted by the vendees of T against the defendants for a declaration that T's share was not subject to any mokurari and for allotting to the plaintiffs a separate takhta out of the takhta which was allotted to the defendants in the previous suit: *Held*, that the question was not expressly decided in the previous suit and it was impossible to hold that a decision might and ought to have been obtained in the previous partition suit by T or the present plaintiffs, and that the defendants failed to make out that the plaintiffs were barred by the rule of *res judicata*. **LATIF HUSSAIN v. BASDEO SINGH (1916) 20 C. W. N. 1177**

5. *Partition suit—Preliminary decree, appeal preferred against, after final decree passed, if lies.* Where a preliminary decree for partition passed by a Munsif who affirmed by the Subordinate Judge, and a second appeal therefrom was not filed until after the

PARTITION—contd.

first Court had passed the final decree for partition, and no appeal was preferred against this latter decree: *Held*, that the preliminary decree having been affirmed by the final decree and the final decree itself not being the subject of any appeal, no second appeal lay against the preliminary decree. *Ahmadnagar Dist. v. Adhar Chandra Ghose*, 18 C. L. J. 321, followed. *Ram Nath Singh v. Basanta Narain Singh*, 17 C. L. J. 568, distinguished. *SADHU CHANDRA DUTTA v. HARANATH DUTTA* (1914) 20 C. W. N. 231

C. ———— **Partition suit—**
Preliminary decree, appeal against—Final decree passed pending the appeal against preliminary decree—No appeal filed against final decree—If either appeal against preliminary decree can proceed. Where in a partition suit a preliminary decree was passed on 20th May 1913 and an appeal was filed against it on 3rd July 1913, but a final decree was passed on 27th September 1913 despite the objection of the appellant that the final decree should not be passed until the appeal has been disposed of, and no appeal was filed against the final decree, and the hearing of the appeal against the preliminary decree was objected to on the ground that the appeal could not proceed inasmuch as a final decree had been passed in the case and no appeal had been preferred against that decree. *Held*, on a review of authorities, that the preliminary objection should be overruled. The appeal could be heard although a final decree had been passed in the case and no appeal had been filed against that decree. *Kan chiy Lal v. Turbeni Sahas*, 1 L. R. 26 All. 532, *Ram Nath Singh v. Basanta Narain Singh*, 17 C. L. J. 568, *s. e.* 18 C. L. J. 509, *Nistaram Debi v. Rati Mohan Biswas*, 18 C. L. J. 214, *Abdul Jahl v. Amar Chand Paul*, 18 C. L. J. 223, *Atul Chandra Singha v. Kunja Behari Singha*, 22 C. L. J. 50, and *Lakshmi v. Haru Devi*, 1 L. R. 37 Mad. 22, followed. *Ahmadnagar Dist. v. Adhar Chandra Ghose*, 18 C. L. J. 321, *Sadhu Chandra Dutta v. Haranath Dutta*, 27 I. C. 125, *Balwant Singh Ram Chandra v. Sakaram Manoharam*, 33 I. C. 137, and *Dattatraya Ramchandra Sardar v. Ahmuddin Fakrudin*, 33 I. C. 116, were distinguishable because in those cases the final decree had been passed before the appeal against the preliminary decree was filed. *PER SHARFUDIN, J.* A preliminary decree in a partition suit has existence independent of the final decree and the final decree really is dependent upon and subordinate to the preliminary decree, and instead of extinguishing a preliminary decree gives effect to it. *CHAMBER, C. J.* A defendant cannot resist partition of a *mekal* on the ground that by an agreement the members of the family agreed to keep it *separate* when the defendant claimed partition of it in a previous suit and succeeded in effecting partition. *WARIKUNISA v. DEEP NARAYAN* (1916) 20 C. W. N. 1174

PARTITION BY COLLECTOR.

See JOINT LATATE.

1 L. R. 43 Calc. 103

PARTITION DEED.

See STAMP ACT (11 OF 1899), SEC. 1,
 ART. 55 . . . 1 L. R. 38 All. 56

PARTNERSHIP.

— — — — — agreement to enter into—

See CONTRACT ACT (IX OF 1872), s. 23,
 1 L. R. 40 Bom. 61

1. ———— *Contract Act (IX of 1872), s. 180—Bailor and bailee—Either may maintain an action against a wrong-doer—If he constitutes partnership—Partner entitled to purchase partnership property—Action for settled account.* A partnership is constituted whenever the parties have agreed to carry on business or to share the profits in some way in common. *Molloy, March v Court of Wards*, 10 B. L. R. 312, *Poddy v Driver*, 5 Ch. D. 458, referred to. A partner is entitled to purchase partnership property provided there is full disclosure and the parties are at arm's length. It is only where the real truth is concealed and the facts are not disclosed that one partner has legitimate grievance against another. *Dunne v English*, L. R. 18 Eq. 524, *Imperial Mercantile Credit Association v Coleman*, L. R. 6 H. L. 189, referred to. An action for the balance of a settled account would not be restrained merely because they were other unsettled accounts between the parties. *Ravson v Nimble*, (1832) Cr. d. Ph. 161, *Prison v Stratton*, 1 And. 30, referred to. S. 180 of the Contract Act provides that if a third person deprives the bailee of the use or possession of the goods bailed or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case, if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such depreciation or injury. *Giles v Grover*, 6 High. N. S. 277, *Jefferson v O. B. Railway Co.*, 5 Ll. d. Ll. 502, *Manders v Williams*, 1 Exch. 239, referred to. *RAMNATH GAGOT v. PITAMBAR DEB GOSWAMI* (1913) 1 L. R. 43 Calc. 733

2. ———— *Partner, if entitled to interest on advance made.* The appellant

upon the general rule that interest between partners is not allowed unless there is express stipulation or a particular course of dealing between the parties as shown by the partnership books or a trade custom to the contrary, has been engaged an important qualification, namely, that an advance by a partner to the firm is treated not as an increase of its capital but rather as a loan on which interest should be paid and that subject to any agreement between the parties interest is payable in money paid or advanced by one partner to the partnership beyond the amount of capital which he had agreed to contribute. That the respondent who claimed the

PARTNERSHIP—*contd.*

Right of the profits which accrued from the sums advanced to the partnership business by the defendant was bound in justice to make an allowance for interest on these sums to the partner. *GOPINDA CHANDRA BASAK v. HARIDAS BASAK* (1915) 20 C. W. N. 634

PARTNERSHIP PROPERTY.

See PARTNERSHIP . I. L. R. 43 Calc. 733

PATNA HIGH COURT.

— — — — — Calcutta High Court, decision of, binding upon Patna High Court, until dissented from by Full Bench. The decision by a Divisional Bench of the Calcutta High Court is binding upon the Patna High Court until dissented from by a Full Bench. *HARIHAR MISSEER v. SYED MOHAMMED* (1916) 20 C. W. N. 983

PATNI TENURE.

— — — — — purchaser of—

See INCUMBRANCE I. L. R. 43 Calc. 558

PAUPER PLAINT.

See STAMP DUTY. I. L. R. 38 All. 469

PAYMENT.

— — — — — to some only of the Trustees—

See TRUST . I. L. R. 39 Mad. 597

— — — — — under compulsion of law—

See DEPOSIT IN COURT.

I. L. R. 43 Calc. 269

PENAL CODE (ACT XLV OF 1860)—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195.

I. L. R. 39 Mad. 677

— — — — — s. s. 23, 24, 463 to 465—

See FORGERY . I. L. R. 43 Calc. 421

— — — ss. 30, 467—"Valuable security"

*—Forgery—Incomplete documents bearing forged signature of executant. Two documents were found in the possession of the accused each bearing a signature which purported to be that of one Bindhyachal, but which in fact was a forged signature. One document was intended to be filled up as a promissory note, the other as a receipt, but the spaces for particulars of the amount, the name of the person in whose favour the document was executed, the date and place of execution and the rate of interest were not filled in; a one-anna stamp was affixed to each but it was not cancelled in any way: Held, that these documents, nevertheless, purported to be valuable securities within the meaning of the definition contained in s. 30 of the Indian Penal Code. *Queen Empress v. Ramasami*, I. L. R. 12 Mad. 49, referred to. *EMPEROR v. JAWAHIR THAKUR* (1916).*

I. L. R. 38 All. 430

— — — ss. 100, 325—Grievous hurt—Private defence—Plea cannot be set up in cases of deliberate

PENAL CODE (ACT XLV OF 1860)—*contd.*

*— — — s. 100—*contd.**

*fight. The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. *EMPEROR v. BECHUR ANOP* (1915) I. L. R. 40 Bom. 105*

*— — — ss. 109, 120B, 420—Abetment by conspiracy—Indian Evidence Act (I of 1872), s. 10. The accused M was a loader of the E. I. Railway Company. The case for the prosecution was that when making out the weights in the consignment notes he entered a weight less than the actual with the result that the railway company received a sum less than they were entitled to and the other accused who were a firm of merchants paid, as consignees of goods, illegal gratification to M for this fraudulent work. It appeared that the name of M signed by himself appeared in one of the note books of the firm of D and J and the jama-kharach of the firm showed the payment of certain sums to accused M. The accused were tried and convicted by the Deputy Magistrate under ss. 120B, 420, 420/109, 161, 161/109, Indian Penal Code, but the Sessions Judge in appeal being of opinion that the conviction under s. 120B could not stand on the ground that the offences were committed before that section came into force, took into consideration only the direct evidence against M of making the endorsement of false weight and finding this to be insufficient acquitted all the accused: Held, that the Sessions Judge rightly held that the conviction under s. 120B, Indian Penal Code, could not stand by reason of the fact that the offences were committed before that section came into force, but he entirely omitted to notice that this was immaterial as the law of abetment includes abetment by conspiracy which was distinctly charged before the Magistrate under s. 420/109, Indian Penal Code. That being so the circumstantial evidence of conspiracy to defraud the railway company was to be considered. That under s. 10 of the Evidence Act the note books and jama-kharach of the firm of D and J could be used as evidence of abetment by conspiracy against M. *KING-EMPEROR v. MANMOHAN ROY* (1915) 20 C. W. N. 292*

— — — s. 143, conviction under—

See SECURITY TO KEEP THE PEACE.

I. L. R. 43 Calc. 671

*— — — s. 147—Rioting—There may be an unlawful assembly and riot in respect of a right which the rioters desire to enforce. *DEPUTY LEGAL REMEMBRANCER, BIHAR AND ORISSA v. MATUKDHARI SINGH* (1915) 20 C. W. N. 128*

— — — ss. 147, 426, 447—Obstruction to public way by building a wall—Pulling down the wall in bonâ fide exercise of the right of public way, no offence. The complainant built a wall obstructing

§ 420—Murder by injury to words

§ 430 of the Penal Code, where there is a right

of retaliation. There cannot be a conviction under

at a bond for a claim of right. *Pratt v. Pratt*

REVENUE, *Pratt and Orin v. Pratt*

§ 430—Evidence of previous

free, unconnected with the charge under enquiry

—Conviction on inadmissible evidence. The ac-

cused was convicted of arson. During the trial,

the Sessions judge admitted the evidence of pre-

vious fires in the locality with which, however,

there was nothing to connect the accused and

relying amongst others on that evidence convicted

the accused. *Hill*, that the Sessions judge was

wrong in admitting the evidence in question.

The High Court set aside the conviction and ac-

quiesced. *Abdul Kadir v. Khan Feroze* (1916)

§ 441, 442—

§ 450—Furling house trespass—

§ 450—Furling house trespass—

§ 450—Furling house trespass—

§ 450—Furling house trespass—

§ 450—Furling house trespass—

§ 450—Furling house trespass—

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§ 450—Furling house trespass—

§ 450—Furling house trespass—

§ 450—Furling house trespass—

§ 456, 457—contd

Code, § 274, Criminal Procedure Code, being

clearly applicable to a case of this character, and

by such conviction *Pratt v. Pratt*

Pratt v. Pratt, 10 C. W. N. 696, distinguished. That

it is well settled that to sustain a conviction under

§ 456 it is not necessary to specify the criminal

intention in the charge, it is sufficient if a guilty

intention is proved such as is contemplated by

§ 441 of the Penal Code. That the intention

may be determined as well from direct evidence

as from the conduct of the party concerned and

the attendant circumstances and in the circum-

stances of the case the Court could presume that

the accused effected the entry with an intent such

as is provided for by § 441 of the Penal Code.

Karachi Thosar v. Khaw Feroze (1916)

20 C. W. N. 1075

§ 456, 471—

§ 456, 471—

§ 456, 471—

§ 456, 471—

§ 456, 471—

§ 456, 471—

§ 456, 471—

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§ 456, 471—

§ 456, 471—

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 201—*contd.*

define the position known in England as that of an accessory after the fact. It is settled law that a principal cannot be convicted as an accessory strongly it might be suspected, that an accused was guilty of murder, more suspicion is no bar to a conviction under s. 201. But if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstance of evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder, they cannot be convicted of the minor offence of causing evidence of the murder to disappear even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn. That on the facts found the accused were principals and the conviction under s. 201 could not stand, *Per CHAPMAN J.* It is unsatisfactory to have an alternative indictment one count charging the accused as principal and the other as accessory after the fact. *Queen Empress v. Limbaya, unreported Criminal Case, Bom. H. C. 1895 at page 799, and Toraj Ali v. Queen Empress, I. L. R. 22 Cal. 638, relied on.*

SUMANTA DUTTA v. KING-EMPEROR (1915).
20 C. W. N. 166

See CRIMINAL PROCEDURE CODE, ss. 4 AND 476 . I. L. R. 38 ALL. 32
ss. 224, 225—

See RESCUE FROM LAWFUL CUSTODY.
I. L. R. 43 Cal. 1161

s. 225B—Warrant of arrest—Actual resistance necessary. In order to constitute an offence under s. 225B of the Indian Penal Code, something more is required than an evasion of arrest or a mere assertion by the person sought or that a fight would be the result of such arrest. There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. *EMPEROR v. ARJAZ HUSAIN (1916)* . I. L. R. 38 ALL. 506

s. 228—Intentional insult to an officer sitting judicially—Application for transfer of the case pending against him made an assertion to the effect that the persons who caused the proceedings to be instituted were on terms of intimacy with the officer trying the case and that therefore he did not expect a fair and impartial trial. Held, that there being no intention on the part of the applicant to insult the Court but merely to procure a transfer of his case, he was not guilty of an offence under s. 228 of the Indian Penal Code. *Queen-Empress v. Abdullah Khan, 1898, W. N. 145, followed. EMPEROR v. MURTI DHAR (1916)* . I. L. R. 38 ALL. 284

PENAL CODE (ACT XLV OF 1860)—*contd.*
ss. 361, 366, 109—*Kidnapping from lawful guardianship—Completion of offence—Confinement—Abetment.* The offence of kidnapping is completed the moment a girl under sixteen years of age is taken out of the custody of her lawful guardian and is not an offence continuing as long as the minor is kept out of such guardianship. There can be no abatement of the offence by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian and the guardian's keeping of the minor is completely at an end. *Regina v. Samia Kaurand, I. L. R. 1 Mad. 173, Queen-Empress v. Ram Dei, I. L. R. 18 All. 350, Queen-Empress v. Ram Sundar, I. L. R. 19 All. 109, Chetty v. Emperor, I. L. R. 26 Mad. 454, Nema Chatteraj v. Queen-Empress, I. L. R. 27 Cal. 1041, Chanda v. Queen-Empress, (1904) Punj. Rec. Cr. J. 19, referred to. EMPEROR v. ABRAHAM KAHMAN (1916)* . I. L. R. 38 ALL. 664

s. 379—
See AGRA TENANCY ACT (II OF 1901), s. 124 . I. L. R. 38 ALL. 40

Theft—Elements necessary to constitute offence—Removal of property in assertion of bona fide claim of right. To sustain a conviction under s. 379 it is necessary to prove dishonest intention to take property out of the possession of another person. Consequently when property is removed in the assertion of a bona fide claim of right the removal does not constitute theft. The claim of right must be an honest one though it may be unfounded in law or in fact. If the claim is not made in good faith but is a mere colourable pretence to obtain or to keep possession, it is of no avail as a defence. *ARJAZ Ali v. KING-EMPEROR (1916)*.
20 C. W. N. 1270
ss. 409, 477A—

See CRIMINAL PROCEDURE CODE, ss. 222 (2), 233 . I. L. R. 38 ALL. 42

s. 417—Cheating, complaint of—Proceeding quashed as prima facie case not made out—Pleader's promise to persuade client to give undertaking—Undertaking not given—Pleader, if may be proceeded against for cheating. In a proceeding under s. 107, Criminal Procedure Code, the opposite party undertook not to go to the property, the subject-matter in dispute, or to do any act that was likely to involve a breach of the peace, on the plea for the complainant agreeing to persuade complainant's master to file an undertaking that he would protect the property from taking that he would protect the property from sale. The undertaking which the latter offered to file, not having been approved of by the opposite party, was not filed, whereupon the opposite party started proceedings against the pleader under s. 417 of the Penal Code: *Held,* that the proceedings should be quashed as no prima facie case of cheating had been made out. *ANIRUNDA Kumar Mukherji v. KUMARDEVI Mukherji (1916)*.
20 C. W. N. 1112

PENAL CODE (ACT XLV OF 1860)—contd

- s. 450, 457—*contd*
 Code, a 234, Criminal Procedure Code, being
 clearly applicable to a case of this character, and
 the accused not having in any way been prejudiced
 by such conviction. *Shan Shih v. King*
Emperor, 16 C. W. N. 996, distinguished. That
 it is well settled that to sustain a conviction under
 s. 456 it is not necessary to specify the criminal
 intention in the charge. It is sufficient if a guilty
 intention is proved such as is contemplated by
 s. 441 of the Penal Code. That the intention
 may be determined as well from direct evidence
 as from the conduct of the party concerned and
 the attendant circumstances and in the circum-
 stances of the case the Court could presume that
 the accused effected the entry with an intent such
 as is provided for by s. 441 of the Penal Code.
Karnal Thosar v. King Emperor (1916)
 20 C. W. N. 1075
 —s. 460, 471—
See Fomento . I. L. R. 43 Cal. 783
 —s. 467, 109, 471—
See Criminal Procedure Code (Act V
of 1893) . s. 403
 I. L. R. 40 Bom. 87
 —s. 498—Criminal Procedure Code,
 s. 199, 235 (2)—*Complaint—Statement made*
in Court as witness Where in a proceeding in-
 tited by the police under a 356 of the Indian
 Penal Code, the husband of the woman appeared
 as a witness and asked the Magistrate trying the
 case to drop the proceedings under a 356 as he
 intended to prosecute the accused under a 498 of
 the said Code. *Hild*, that the statement made
 by the husband, as a witness, fell within the defi-
 nition of complaint as defined in s. 41 of the
 Code of Criminal Procedure and therefore a con-
 viction of complaint was legal. *In the*
matter of (Jyoti Devi, I. C. L. R. 523, Queen
Emperor v. Bangla, I. L. R. 23 All. 72, referred to.
 I. L. R. 38 All. 276
 PENAL PROVISIONS
 —constitution of—
See TRANSITORY COMMISSION
 I. L. R. 39 Mad. 1649
 PENALTY.
See CONTRACT ACT (IV OF 1912) . s. 71
 I. L. R. 38 All. 52
See TRANSFER OF PROPERTY ACT (IV OF
1882) . s. 83 . I. L. R. 39 Mad. 579
 —Scope of the action—*and to*
recover penalty by Secretary of State, maintain-
ability of—Decision of Revenue authorities—Juris-
diction of Civil Court Unless there is a statutory
bar, a suit is maintainable by the Secretary of
State for India in Council for recovery of a penalty
lawfully imposed. A Civil Court has no juris-

- s. 420—*Abetment by conspiracy for world*
of irrigation It is enough to be a conspiracy under
 a 430 of the Penal Code, where there is a right
 or a bona fide claim of right. *DEEPTI LAXMI*
PRESEPAWSEN, Binay and Omprakash v. MARIK
Duarai Siva (1915)
 20 C. W. N. 128
 —s. 436—*Abetment—Falsification of evidence*
free, unconnected with the charge under enquiry
—Conviction on inadmissible evidence The ac-
 cused was convicted of arson. During the trial
 the Sessions Judge admitted the evidence of pre-
 vious fires in the locality with which, however,
 there was nothing to connect the accused and
 relying amongst others on that evidence convicted
 the accused. *Hild*, that the Sessions Judge was
 wrong in admitting the evidence in question.
 The High Court set aside the conviction and sen-
 tence. *Abdur Kadir v. King Emperor (1916)*
 20 C. W. N. 1267
 —s. 441, 447—
See Criminal Procedure
 I. L. R. 43 Cal. 1143
 —s. 450—*Entering house with intent*
course with a view of full age, no offence. An
accused person, though he may have known that,
if discovered, his act would be likely to cause
annoyance to the owner of a house, cannot be
said to have intended either actually or consensu-
ally to cause such annoyance. Where, there-
fore, it was proved that a person entered a house
with intent to have illicit intercourse with a
woman who was a widow and of age. Hild that he
 was guilty of no offence. *Shan Singh v. King*
Emperor, 1908 (Pun) Rec. Cr. J. 81, disapproved.
 I. L. R. 37 All. 395.
 referred to. *Queen Emperor v. Rajendrakishore,*
 I. L. R. 19 Sind 210, followed. *Emperor v.*
Gaya Bhan (1911) . I. L. R. 38 All. 517
 —s. 456, 457—Criminal Procedure
 Code, s. 238—*Conviction under a 456 when charged*
 under a 457, propriety of—Criminal intention of
 s. 456—*Intention of accused, how may be deter-*
 mined by Court. The view that under no circum-
 stances can a conviction be made under a 456 of
 the Penal Code, when the accused has been charged
 with the commission of an offence under a 457,
 cannot be maintained. The accused in the middle
 of the night entered the house of the complainant
 while she was asleep, was caught but ultimately
 ran away. The motive alleged by the prosecu-
 tion was to commit theft of the complainant's
 ornaments. The accused was unanimously found
 for offence under s. 457 and 350 of the Penal
 Code, and the finding of the Sessions Judge that the
 intention of the accused was really to make im-
 mortal proposals to the complainant and thus to
 annoy her, conveyed him under s. 456 of the
 Penal Code. *Hild*, that although the specific
 intention, namely, the intent to commit theft was not
 established, yet it was competent to the Court
 to convict the accused under s. 456 of the Penal
 Code.

—s. 456, 457—*Intention of accused, how may be deter-*
 mined by Court. The view that under no circum-
 stances can a conviction be made under a 456 of
 the Penal Code, when the accused has been charged
 with the commission of an offence under a 457,
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 Penal Code. *Hild*, that although the specific
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 established, yet it was competent to the Court
 to convict the accused under s. 456 of the Penal
 Code.

POLICE REPORT.

See FALSE INFORMATION.

I. L. R. 43 Cal. 173

See SURETY I. L. R. 43 Cal. 1024

PORAMBOKE.

See MADRAS FOREST ACT (XXI OF 1882), ss. 6, 10, 16, 17.

I. L. R. 39 Mad. 494

POSSESSION.

See LESSOR AND LESSEE.

I. L. R. 39 Mad. 1042

— suit to recover —

See LIMITATION. I. L. R. 43 Cal. 34

— transfer of —

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 40. I. L. R. 40 Bom. 498

— Possession and title, —

— suit to establish, whether suit for mere declaration —

— *Maintainability* — Whether catching fish in a stream

let amounts to *dispossession*. Where the plaintiffs

in a suit establish their title to a village and also

that they have been in possession of it and of a

streamlet which lies within it, but that the plain-

tiff's possession has been disturbed inasmuch as

the defendants' people have caught fish in it;

Held, that, under such circumstances the plaintiffs'

suit for a mere declaration is maintainable. Even

if the defendants are found to have granted the

right to catch fish in the streamlet to other persons

not parties to the suit, that act would not amount

even to disturbance of possession still less to dis-

possession nor would the fact that some persons

have at times caught fish in the streamlet show that

the plaintiffs have been dispossessed. At most

the catching of fish in the streamlet would be a

disturbance of possession. *SAMDHO LAL v. BHU-*

GAT v. KESHO MOHAN THAKUR (1916).

20 G. W. N. 1274

POWER OF ATTORNEY.

See OATHS ACT (X OF 1873), ss. 8, 9, 10.

I. L. R. 38 All. 131

See PRINCIPAL AND AGENT.

I. L. R. 43 Cal. 527

PRACTICE.

See APPEAL. I. L. R. 43 Cal. 833

See ATTORNEY'S LIEN FOR COSTS.

I. L. R. 43 Cal. 932

See CIVIL PROCEDURE CODE (ACT V OF

1908), s. 92. I. L. R. 4 Bom. 439

See CIVIL PROCEDURE CODE (1908),

O. XLVIII, r. 9.

I. L. R. 38 All. 280

See CONSOLIDATION OF APPEAL.

I. L. R. 43 Cal. 95

See COSTS. I. L. R. 43 Cal. 190

See CRIMINAL PROCEDURE CODE, s. 476.

I. L. R. 38 All. 695

PRACTICE—contd.

See CRIMINAL REVISION.

I. L. R. 43 Cal. 1029

See DIVORCE ACT (IV OF 1869), s. 37.

I. L. R. 38 All. 688

See EX PARTE DECREE.

I. L. R. 43 Cal. 1001

See INSOLVENCY.

I. L. R. 43 Cal. 243

See JOINDER OF CASES.

I. L. R. 43 Cal. 13

I. L. R. 38 All. 457

See JOINT ESTATE.

I. L. R. 43 Cal. 103

See LAND ACQUISITION.

I. L. R. 43 Cal. 665

See LEGAL PRACTITIONER'S ACT (XXVIII

OF 1879), s. 14.

I. L. R. 38 All. 182

See PERJURY. I. L. R. 43 Cal. 542

See PLAINT. I. L. R. 43 Cal. 441

See RECORDS, POWER TO CALL FOR.

I. L. R. 43 Cal. 239

See REVISION. I. L. R. 43 Cal. 903

See SOLICITOR'S LIEN FOR COSTS.

I. L. R. 43 Cal. 676

See SUMMONS, SERVICE OF.

I. L. R. 43 Cal. 447

See TITLE, SUIT FOR DECLARATION OF.

I. L. R. 38 All. 440

See VAKALATNAMA.

I. L. R. 43 Cal. 884

See VALUATION OF SUIT.

I. L. R. 43 Cal. 225

— deaf and dumb accused —

See CRIMINAL PROCEDURE CODE (ACT V

OF 1898), s. 341.

I. L. R. 40 Bom. 598

— *Civil Procedure Code* (Act V of 1908), O. XXI,

r. 41—*Judgment-debtor, examination of—Appli-*

cation by judgment-debtor to have order for exami-

nation set aside. An application under O. XXI,

r. 41, of the Civil Procedure Code, 1908, made

ex parte on a verified tabular statement, is in

order. The judgment-debtor is entitled to be

heard to have such order set aside, but he should

apply on summons. The object of O. XXI, r. 11

is to obtain discovery for purposes of execution

to avoid unnecessary trouble in obtaining satis-

faction of money decrees. Although an order for

personal examination is likely to operate harshly

and cause unnecessary harassment and obviously

ought not to be made unless the Court is satisfied

about the bona fides of the application and the

urgent necessity, still such applications may be

usefully encouraged to prevent unduly delay, in

troublesome and expensive execution proceedings.

In re Premji Prtkundaj, I. L. R. 17 Bom. 511.

3. FORMALITIES—continued

PRE-EMPTION--cont'd

2. —
Mahomedan law of sale whether obligatory or not complete, where—*Contractus necessary before completion, consummation with—* 37, *Act XII of 1857.* *See* *Mutlick, J* There being special custom pleaded a case where pre-emption is claimed by a Hindu must be tried on the principle of justice equity and good conscience under a 37, *Act XII of 1857.* As a sale is not complete till legal ownership passes no matter whether there has been payment and delivery the pre-emptor is entitled in the case of a property worth more than Rs 100 does not accrue till after registration. It would be against equity, justice and good conscience to apply in such a case the Mahomedan law of sale which is no longer in force and to attach to a mere contract for sale an incident which (the Mahomedan lawyers intended to attach only to an actual sale. The performance of the two formalities *shahd mahmudi* and *shahd shahid* can be combined but it is essential that the *shahd mahmudi* should refer expressly to the *shahd mahmudi* as having been duly made. *Abdumunem v. Abdul Ali Khan, I L R 22 All 331, 332, v. Ghyas Ali Khan, I L R 22 All 331, 332, v. Ghyas Ali Khan, I L R 27 All 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*

Charge to jury—
Induction—Omission to direct jury on points til-
ling in accused's favour—High Court—Inference—

NOTES 1

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|-----|-----------------------|
| 321 | 0 RITE OF THE EMBROID |
| 319 | 5 RITE OF THE EMBROID |
| 319 | 4. IMIT |
| 318 | 7 MONTAGE |
| 317 | 2 FORMALITIES |
| 317 | 1. CRYSTAL |

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PRE-EMPTION.

RECORDING THE ACCUSED
IN THOSE CASES WHERE IT IS MADE TO APPEAR THAT
THE JUDGE HAS JUDICATED THE ACCUSED
A FAVOUR
IN A. 21 OF
THE INDIAN JUDICIAL ACT WOULD INFLUENCE THE POLICE
OFFICE QUARTER WHETHER THE STATEMENT OF
THE ACCUSED BY AN ACCUSED BEFORE THE COMMITTING MAGIS
TRATE IS GOVERNED BY A 297 OF THE CRIMINAL PROCEDURE
CODE OR BY A 21 OF THE INDIAN EVIDENCE
ACT, FURNISH A FAKINA APPRA (1917)
L. L. R. 40 Bom. 220

PREAMBLE

I. L. R. 40 Bom. 220
Furnor & Fakira Aryya (1915)

Charge to jury—Omission to direct jury on points left in accusat^r's favour—High Court—Interference—

FACTICE—confid

PRE-EMPTION—*contd.*

3. MORTGAGE—*contd.*

tion of a document executed by the borrowers to secure a loan was as follows:—"We agree that we shall pay annually the interest and in default of payment of interest for two years, the creditors shall have the right without waiting for the expiry of the time fixed, to file suit and to recover their dues from the property mortgaged (*mabzuza*) and if the creditors make delay in realizing the principal and interest then the aforesaid creditors shall not be entitled to recover their dues under the deed from any other property of myself excepting the property mortgaged (*mabzuza*). A claim for pre-emption was brought based upon this document which was claimed to be a sale, or at least a mortgage. *Held* by Richards C. J., that it was very difficult to distinguish the transaction evidenced by the document in question from what is ordinarily called a "simple mortgage." On a construction, however, of the *wajib-ul-az* it was held not to include mortgages which did not involve a change of possession. *Held* by Tribunal J., that the document under consideration did not amount to a mortgage, but at most constituted a charge on the property referred to therein *Datt Singh v. Bahadur Ram, I. L. R. 34 All. 446*, referred to. *Karsheed Ali v. Abdur Majid* (1916) . . . I. L. R. 38 All. 361

4. PRICE.

*Decree for pre-emption directed to be deposited within one month—Decree-holder's application for extension of time granted—Deposit made within extended time—Civil Procedure Code (Act V of 1908), O. XX, r. 14—S. 148, Civil Procedure Code—Court's jurisdiction—S. 115. On the last day fixed for the deposit of money by a decree of pre-emption, the decree-holder applied for extension of time to make the deposit and he deposited the amount within the extended time granted to him (*ex parte*) by the Court: *Held*, that the Court had jurisdiction to extend the time. The High Court declined to interfere under s. 115 of the Civil Procedure Code. *Abu Muhammad Aliar v. Muckkut FERTAP NARAY* (1916). 20 C. W. N. 860*

5. RIGHT OF PRE-EMPTION.

1. *Owners of resumed muafi land—Co-shares. Held, that the owners of a plot of resumed muafi land assessed to revenue separately from the rest of the village, which constituted one 16-anna maha, was not a co-sharer with the owners of the maha, so as to give him a right of pre-emption on sale of the maha, under the terms of the *wajib-ul-az* which declared a right of pre-emption to exist, on a sale by a co-sharer, in favour of other co-shares in the village. *Kallian Mal v. Madan Mohan, I. L. R. 17 All. 447, Narain Das v. Ram Saran Das, I. L. R. 17 All. 419, Raghunath Prasad v. Kanhaya Lal, All. W. N., 1902, 68, Ahmad**

PRE-EMPTION—*contd.*

5. RIGHT OF PRE-EMPTION—*contd.*

Ali v. Najam-un-nissa, 2 All. L. J. 145, and Ballu Lal v. Bhola Nath, 19 Indian Cases 119, referred to. *Narain Prasad v. Munna Lal, I. L. R. 30 All. 329*, not followed. *Maddeo Prasad v. Jagar Deo Gir* (1916) . . . I. L. R. 38 All. 260

2. *Property, partition of, after institution of suit but before decree—Plaintiff, if entitled to decree—Court, if should take notice of matters which come into existence after price in, if invalidates—Review on ground not before taken, when allowed—Suits Valuation Act (VII of 1887), s. 11—Valuation—Appeal—Jurisdiction. *Samperson C. J., and Mookenjee J.—The right of the plaintiff to get pre-emption must exist not only at the time of the sale, but also at the time of the institution of the suit, and finally up to and at the date of the decree of the trial Court. A judgment passed by the High Court on second appeal was reviewed on a ground not taken at any previous stage of the proceeding, when the ground raised a pure question of law which did not depend for its determination upon the investigation of new facts and when the alleged error was apparent on the face of the record. [1892] A. C. 473 at p. 480, referred to. *Per Moo-kenjee J.—The decree in a suit should ordinarily conform to the rights of the parties as they stood at the date of its institution. But there are cases when it is incumbent upon a Court of Justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. This principle will be applied where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. *Per SHARFUDIN and ROE J.J.—For the performance of the talab-i-muassab what is necessary is an expression by the pre-emptor in clear and explicit terms that the demands to make the purchase and it is not necessary that he should, at the time of the performance of the ceremony, make any mention of the price. Where in performing the talab, the claimant, owing to mistake in information, understated the price, though the ceremonies required by law were fully performed: *Held*, that the talab was validly performed. Plaintiff, suing for pre-emption, valued his suit at Rs. 4,500, the price for which, according to his information, the property had been sold to the defendant. The suit was dismissed by the Subordinate Judge but decreed on appeal by the District Judge who, however, found that the real value of the property was over Rs. 6,000. On second appeal it was urged that having regard to the value of property as found by the District Judge, appeal lay to the High Court and not to the District Judge, but the point was not taken in the****

PRINCIPAL AND AGENT—*contd.*

name and in my behalf." Under this power the agent pledged the firm's credit with the plaintiff Bank to enable a client who applied to him for financial assistance to have a cash credit account opened in his name and obtain from the Bank advances to secure due repayment of which he executed a promissory note in favour of defendant's firm which the agent endorsed over to the Bank in conformity with the provisions of the Presidency Banks Act (XI of 1876), s. 37, cl. (e). The agent at the same time giving the Bank a letter of guarantee on behalf of his firm. The cash credit account thus opened, having become insolvent, the Bank brought an action for the amount due, to which the defence was a denial of authority on the part of the agent to enter into the transactions so as to bind the defendant's firm. *Held*, (reversing the decision of an Appellate Bench of the Chief Court), that applying the principles of construction of powers of attorney laid down in *Bryant, Powis and Bryant v. La Banque du Ceylon*, [1893] A. C. 170, the authority to enter into transactions of the nature in dispute in the present case, was to be found in the document itself by necessary implication from the nature of the business with the general management of which the agent was entrusted: without such authority it would hardly have been possible to carry on the business of a money-lender and banker. On the evidence, moreover, it was proved that amongst such Chetty money-lending firms it was the practice for the agent to pledge the credit of the firm; and that for a considerable time similar transactions had been entered into previously by the agent without this authority being questioned. The mere fact that the defendant did not receive any benefit on the transaction would not (if it were the case) relieve him of liability, if the authority of the agent was established; but the defendant's books of accounts which were called for and not produced, would presumably have shown such transactions, and the receipt of commission on them. *BANK OF BENGAL v. RAMAKRISHNA CHETTY* (1915) I. L. R. 43 Cal. 527.

2. *Liability of principal for fraudulent conduct of the agent—Scope of the agent's employment—Unauthorized acts—Scope of agency—Tort—The principal is liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, torts, negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorize or justify or participate in, or, indeed, know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorized them to be done, or he has subsequently adopted them for his own use and benefit. *McGowan v. Dyer*, L. R. 8 Q. B. D. 141, *Hern v. Nichols*, 1 Saltfield 289, *National Exchange Co. v. Dyer*, 2 Macq. H. L. 103.*

PRESUMPTION—*contd.*

See SECOND APPEAL.

— of death—

I. L. R. 38 All. 122

PREVIOUS ACQUITTAL.

See PRACTICE. I. L. R. 40 Bom. 220

PREVIOUS CONVICTION.

— proof of—
See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Cal. 1128

PRIMOGENITURE.

See INHERITANCE—IMPARTIAL ESTATE.

I. L. R. 38 All. 590

PRINCIPAL.

— death of—

See PRINCIPAL AND AGENT.

I. L. R. 43 Cal. 248

— liability of—

See PRINCIPAL AND AGENT

I. L. R. 43 Cal. 511

PRINCIPAL AND AGENT.

See COSTS. I. L. R. 43 Cal. 190

See OATHS ACT (X of 1878), ss. 8, 9, 10.

1. Construction of

Power of Attorney—Denial of authority of agent—Chetty money-lending firm, business of—Power implied from nature of business which could not be carried on without it—Proof of similar previous transactions with objection by principal—Account books, presumption to be drawn from—Evidence Act (I of 1872), s. 114. The defendant was a Chetty and had a large money-lending business in Rangoon which he carried on by an agent to whom he gave a power of attorney for the general management of his business in which he stated the duties and powers entrusted to him as being, "to transact, conduct and manage all affairs, concerns, matters, and things" in which he "may be in anywise interested and concerned," and for that purpose "to use or sign my name to any document or writing whatsoever: to borrow money from any bank or banks, firm or firms, person or persons either with or without pledge of securities for money advanced to various persons," and "to make, draw, sign, accept, endorse, negotiate and transfer all and every or any bills of exchange, promissory notes, hundies, cheques, drafts, bills of lading and all other negotiable securities whatsoever to which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit to make, draw, sign, accept, endorse, negotiate and transfer in my

PROBATE—concl'd.

Administration with copy of the will annexed may be granted to any competent applicant. Karvasji Sorabji v. Bai Dinbai (1916)

I. L. R. 40 Bom. 666

PROBATE AND ADMINISTRATION ACT (V OF 1881)

— ss. 2, 4, 82, 92—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

See SETTLEMENT BY A HINDU WOMAN

ON TRUSTS . I. L. R. 40 Bom. 341

—s. 55—

See INTERROGATORIES.
I. L. R. 43 Cal. 300

_____ s. 83-Probate Case-Procedure. S.

333 of the Probate and Administration Act read with O. XXIII. r. 3, Civil Procedure Code, merely

means that in a probate case the Civil Procedure

code so far as possible determines the procedure of the Court. These sections nowhere say that it

is competent to the Court to allow the parties to divide the testator's property without paying

the will. *Kunja Lal Choudhuri v. Kailash Chandra*

Utra Choudhury, 14 C. W. N. 1068, and Saroda
Kamla, Das v. Gobinda Mohan Das, 12 C. T. J.

referred to. There can be no dismissal of a

proportion of cases in which the defendant is liable for the plaintiff's damages is not the same as the proportion of cases in which the plaintiff is liable for the defendant's damages.

and objector. The main issue in such a case is whether or not the will has been proved and the

only effect of a compromise is to reduce a con-

ious proceeding into one which is not contentious, but this does not absolve the Court from the

ask of their granting probate or refusing it. If

compromise has been made and the object withdrawn from the contest, the Court will grant

probate in common form, but the Court cannot

If the compromise as if the decree was one

able of execution by him. JAYAKUMAR THAKUR. 20 C. W. N. 986

ss. 86, 90—Administrator's application.

on to sell, granted against opposition—A typical—order if appealable as decree or irreversible of which.

Interlocutory orders under

ne Act, if applicable. A Hindu widow who had obtained Letters of Administration to the estate

of her deceased husband applied under s. 10 of the Probate and Administration Act for permits.

to sell the dwelling-house for the purpose of

...satisfying debts. The application which was
...posed by the reversioner having been granted,

no latter appealed: *Held*, per D. CHATHAM: That the order was a decree as defined in the

... that the order was a review of the ...
... Civil Procedure Code and was appealable as such ...

were: Whether s. 86 of the Probate and Administration Act in making orders of the Probate

... "appealable under the rules contained in the Criminal Procedure Code" means only that the

procedure in such appeals would be as in appeals

under the Civil Procedure Code. 1908.

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See PRIVY COUNCIL DECISIONS.

See PRIVY COUNCIL, PRACTICE OF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 110 I. L. R. 40 Bom. 477

PRIVY COUNCIL DECISIONS.

See WAKF, VALIDITY OF.

I. L. R. 43 Calc. 158

PRIVY COUNCIL PRACTICE OF.

See CONTRACT I. L. R. 39 Mad. 509

PROBATE.

See JOINT PROBATE.

See LIMITATION I. L. R. 43 I. A. 113

See SECOND PROBATE.

I. L. R. 43 Calc. 625

obtained by one executor—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

suit to revoke—

See DECLARATORY DECREE, SUIT FOR.

I. L. R. 43 Calc. 694

1. *Succession duty—Court Fees Act (VII of 1870), s. 19 (c) as amended by Act XIII of 1875, s. 19 (c)—Death of the first executrix—Application for second probate—Duty payable, if any, on second probate.* When an executor, to whom probate has been granted, dies leaving a part of the testator's estate unadministered, and a new representative is appointed for the purpose of completing the administration there being no new succession and no new devolution of the estate, no fresh succession duty should be levied. What the legislature appears to have intended is that where the full fee, chargeable under the Court Fees Act on a probate, at the time it is granted, has been paid, no further fee shall be chargeable when a second grant is made in respect of that property as comprised in that estate. *In the goods of Chalmers*, 21 W. R. 246n, *In the goods of Gasper*, I. L. R. 3 Calc. 733, *In the goods of Innes*, 16 W. R. 253, *In the goods of Balthazar*. (1908) L. B. R. 255, *In the goods of Ameerun*, 15 496, *Webster v. Spencer*, 3 B. & Ald. 496, *ins v. Cummins*, 3 Jo. & Lat. 65, *of Bell*, 2 P. & D. 247, *Anon*, 13, *Ano* Cas. 265, and *Watkins* gl. & referred to. **SWARNA-STATE FOR INDIA R. 43 Calc. 625**

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PROBATE—concl'd.

Administration with copy of the will annexed may be granted to any competent applicant. *KAVASJI SORABJI v. BAI DINBAI* (1916)

I. L. R. 40 Bom. 666

PROBATE AND ADMINISTRATION ACT (V OF 1881).

ss. 2, 4, 82, 92—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

s. 4—

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS I. L. R. 40 Bom. 341

s. 55—

See INTERROGATORIES.

I. L. R. 43 Calc. 300

s. 83—*Probate Case—Procedure.* S. 83 of the Probate and Administration Act read with O. XXIII, r. 3, Civil Procedure Code, merely means that in a probate case the Civil Procedure Code so far as possible determines the procedure of the Court. These sections nowhere say that it is competent to the Court to allow the parties to divide the testator's property without proving the will. *Kunja Lal Chowdhuri v. Kailash Chandra Chowdhury*, 14 C. W. N. 1068, and *Saroda Kanta Dass v. Gobinda Mohan Dass*, 12 C. L. J. 91, referred to. There can be no dismissal of a probate case in accordance with the terms of a petition of compromise between the propounder and objector. The main issue in such a case is whether or not the will has been proved and the only effect of a compromise is to reduce a contentious proceeding into one which is not contentious, but this does not absolve the Court from the task of their granting probate or refusing it. If a compromise has been made and the objector withdraws from the contest, the Court will grant probate in common form, but the Court cannot dismiss the case altogether and embody the terms of the compromise as if the decree was one capable of execution by him. *JANAKRATI THAKURAIN v. GAJANAND* (1916) 20 C. W. N. 988

ss. 86, 90—*Administrator's application to sell, granted against opposition—Appeal—Order if appealable as decree or irrespective of whether order decree or not—Interlocutory orders under the Act, if appealable.* A Hindu widow who had obtained Letters of Administration to the estate of her deceased husband applied under s. 90 of the Probate and Administration Act for permission to sell the dwelling-house for the purpose of satisfying debts. The application which was opposed by the reversioner having been granted, the latter appealed: *Held, per D. CHATTERJEE J.*, that the order was a decree as defined in the Civil Procedure Code and was appealable as such *Quære: Whether s. 86 of the Probate and Administration Act in making orders of the Probate Court "appealable under the rules contained in the Civil Procedure Code" means only that the procedure in such appeals would be as in appeals under the Civil Procedure Code.* *Per BACH-*

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concl'd.*s. 86—*concl'd.*

CROFT J—An appeal lay under the terms of s. 86 of the Probate and Administration Act irrespective of whether the order was a decree or not
SARAT CHANDRA PAL v. BENODE KUMAR DAS (1915) 20 C. W. N. 28

s. 90—

See HINDU LAW—PARTITION.

I. L. R. 43 Calc. 1118

PROBATE PROCEEDINGS.

See INTERROGATORIES

I. L. R. 43 Calc. 300

PROCEDURE.

See CIVIL PROCEDURE CODE (1908), O XI, r 21. I. L. R. 39 All. 5

See CRIMINAL PROCEDURE CODE, s 239 I. L. R. 38 All. 311

See FALSE INFORMATION

I. L. R. 43 Calc. 173

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 17

I. L. R. 38 All. 425

See REVIVER. I. L. R. 43 Calc. 903

PROFESSIONAL MISCONDUCT.

See UNPROFESSIONAL CONDUCT

PROMISSORY NOTE.

payable on demand—

See LIMITATION ACT (IX OF 1908), Sch. I, Art. 80 I. L. R. 39 Mad. 129

By guardian of minor (minor's 1881),
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as guardian The minor is not personally liable on the instrument. The case is governed by the principles of Hindu Law and ss. 28 and 30 of the Negotiable Instruments Act (XXVI of 1881) are not applicable. *Subramania Aiyar v. Arumuga Chetty*, I L R 26 Mad. 330, followed. *KRISHNA CHETTIAR v. NAGAMANI AMMAL* (1915)

I. L. R. 39 Mad. 915

PROPERTY.

See ANCESTRAL PROPERTY

I. L. R. 39 Mad. 930

disposal of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 517.

I. L. R. 40 Bom. 186

PROPRIETARY TITLE.

question of—

See AGRA TENANCY ACT (II OF 1901), ss 58, 177 (c) I. L. R. 38 All. 465

PROSECUTION.

duty of—

See EVIDENCE ACT, 1872, s. 33

I. L. R. 39 Mad. 449

onus on—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 256

I. L. R. 39 Mad. 503

PROSECUTION WITNESSES.

right of accused to recall and cross-examine—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 256 I. L. R. 39 Mad. 503

PROSPECTIVE LEGISLATION.

See ASSESSMENT

I. L. R. 43 Calc. 973

PROTECTION ORDER.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss 6, 8, 25, 38, 39 (2), (a), (b), (c), (d), (f), (g)

I. L. R. 40 Bom. 461.

PROVINCIAL INSOLVENCY ACT (III OF 1907).

ss. 16, 47, 12 cl. (3), and 51—
Insolvency Rules XXI, cl. (3) and V, cl. (2) and (3)—Civil Procedure Code (V of 1908), O III, r 3 and O V, r 12—Petition by creditor to adjudicate debtor on insolvent—Service of notice on agent, if sufficient—No notice sent by Court through registra-

to adjudicate his debtor an insolvent under s. 10 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court. *Held*, that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post. Effect of s. 47 of the Provincial Insolvency Act, and Rule XXI, clauses (2) and (3) and Rule V, clause (2) of the Insolvency Rules, considered. Under section 4 of the Provincial Insolvency Act, a debtor can be adjudicated an insolvent upon acts of insolvency committed by his agent. In the matter of *Brynmohun Dobay*, 2 C. W. N. 306, referred to. Under the English law, an act of bankruptcy must be a personal act or default of the debtor and could not be committed through an agent. *Ex parte Blain*, 12 Ch. D. 522, and *Coole v Charles A. Vogeler Co.*, [1901] A. C. 102. Though, under s. 16 of the Provincial Insolvency Act, an adjudication of the debtor as an insolvent relates back to the date of the petition, the power of the debtor's agent under a general power of attorney ceases only with reference to his dealings with the debtor's property and the carrying on of the trade but not with reference to other acts of the agent and one of those acts must be taken to be to stave off bankruptcy orders against the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—concl'd.

— s. 16—concl'd.

principal. *In re Pollit*, [1893] 1 Q. B. 455, referred to. *KALIANJI v. THE BANK OF MADRAS* (1915)

I. L. R. 39 Mad. 693

— ss. 20, 22—*Properties advertised for sale by the Official Receiver as subject to mortgage—Change in the sale proclamation on the day of sale—Sale free of incumbrance—Irregularity vitiating the sale.* S. 22 of the Provincial Insolvency Act gives unfettered discretion to the Court to set aside a sale held by the Official Receiver if the change in the conditions of the sale-proclamation had the effect of preventing intending bidders from coming forward. *In re Bhukhandas*, 7 Bom. L. R. 954, distinguished. *Ex parte Lloyds, Re Peters*, 47 L. T. 164. A creditor who is entitled to a decision in respect of the sale of the property of the insolvent is a person aggrieved if the decision goes against him. *In re Laul Ex parte, Board of Trade*, [1894] 2 Q. B. 805, and *Ex parte Official Receiver*, 19 Q. B. D. 174, followed. *TIRUVENKATACHARIAR v. THANYAYIAMMAL* (1915)

I. L. R. 39 Mad. 479

— s. 37—

See FRAUDULENT PREFERENCE.

I. L. R. 43 Cal. 640

— *Insolvent—Effect of lease of occupancy holding granted shortly before filing petition of insolvency.* S. 37 of the Provincial Insolvency Act, 1907, has no application to the case of a lease granted for good consideration by an insolvent shortly before the filing of his petition, unless the object thereof is to give a preference to one creditor over the others. If the lease is found to be a merely colourable transaction, the insolvent still retaining possession of the property leased, it can be avoided and the property placed in the hands of the receiver; otherwise the rents should be paid to the receiver for the benefit of the creditors. The leased property being an occupancy holding: *Held*, that there was no reason for directing the surrender thereof to the zamindar. *DESAJ v. SAGAR MAL* (1915)

I. L. R. 38 All. 37

— s. 46, cl. (3)—*Appeal out of time—Deduction of time for obtaining copy, if permissible—Delay, if excusable—General Provisions of Limitation Act, if applicable—Limitation Act (IX of 1908), ss. 5, 12 and 29—Conversion of Appeal into Civil Revision Petition, when permissible—Order without notice to Official Receiver, illegal.* An appeal under s. 46, cl. (3) of the Provincial Insolvency Act, which was preferred to the High Court beyond the period of time fixed therein, is barred by limitation as the time requisite for obtaining a copy of the order appealed against cannot be deducted under that Act or under ss. 12 (2) and 29 of the Limitation Act. *Quare*: Whether the Court can excuse the delay under s. 5 of the Indian Limitation Act (IX of 1908). Case law on the subject considered. The High Court is competent to convert such an appeal into a

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—concl'd.

— s. 46—concl'd.

Civil Revision Petition under s. 15 of the Charter Act, and to set aside the order where the lower Court passed the order in favour of a creditor of an insolvent without the notice to the Official Receiver. *Abdulla v. Salaru*, I. L. R. 18 All. 4, followed. *SIVARAMAYYA v. BHUJANGA RAO* (1915)

I. L. R. 39 Mad. 593

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

— s. 17—*Civil Procedure Code (1908), s. 24—Suit transferred from Subordinate Judge with Small Cause Court powers to Munsif—Ex parte decree—Procedure Held*, that s. 24 sub-cl. (4), of the Code of Civil Procedure contemplates a Court vested with the powers of a Court of Small Causes and that when a suit is transferred from that Court to another Court, the Court trying it is to be deemed a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act. Therefore when such a suit is transferred to a Munsif from the Court of a Subordinate Judge vested with Small Cause Court powers and the former passes an *ex parte* decree in the suit, an application to have the *ex parte* decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of the amount as required by s. 17 of the Provincial Small Cause Courts Act, the provisions of which are mandatory. *Mangal Sen v. Rup Chand*, I. L. R. 13 All. 324, *Jagan Nath v. Chet Ram*, I. L. R. 28 All. 470, referred to. *Sarju Prasad v. Mahadeo Pande*, I. L. R. 37 All. 470, distinguished. *CHHOTAY LAL v. LAKHMI CHAND MAGAN LAL* (1916)

I. L. R. 38 All. 425

— s. 23 (1)—*Return of a plaint under—High Court's power of interference—S. 25, Provincial Small Cause Courts Act, s. 115, Civil Procedure Code (Act V of 1908), and s. 107, Government of India Act of 1915.* Where a Provincial Small Cause Court returned a plaint for presentation to a proper Court on the ground that the "suit involved a question of title which should be tried in a regular suit" and the plaintiff thereupon moved the High Court and obtained a rule, on a preliminary objection taken that the order under s. 23 (1) is not covered by s. 25 of the Provincial Small Cause Courts Act: *Held*, that there is a good deal of distinction between disposing of a case and deciding a case. A case is something less definite than a suit. The meaning of the word "decided" as held in *Subal Ram Dutt v. Jagadananda*, 13 C. W. N. 403 approved. *Umesh Chandra v. Rakhal Chandra*, 15 C. W. N. 666, referred to. Under s. 115 of the Civil Procedure Code, the High Court would only interfere if the question were one of jurisdiction. The Calcutta High Court's powers under the Charter Act have been exercised, with few exceptions, only in cases where jurisdiction has been exceeded or the Judge has ignorantly or perversely refused to exercise

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concl'd.*

s. 23—*concl'd.*

or made only a colourable pretence at exercising jurisdiction vested in him by law. This limited power should be exercised only when irreparable injury would be caused to one of the litigants.

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is designed to meet cases in which a Small Cause Court Judge is satisfied that the question of title raised is so intricate that it should not be decided summarily, but in a Court in which the evidence is recorded in full and the decision is open to appeal, the matter is one of discretion, and where discretion is vested in a Court, it is not open to interference unless it has been exercised ignorantly or perversely. *GANGA PRASAD v. NANDURAM* (1916)

20 C. W. N. 1080

s. 25—*Revision—Jurisdiction of High Court—Execution of decree—Limitation—Application to Court to take a step in aid of execution—Application for extension of time* A bond *fide* application made by the decree holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgment debtor is an application to take a step in aid of execution, and saves limitation. Where a Small Cause Court without any materials on the records gratuitously assumed that such an application presented by the decree holder was not *bond fide*, and consequently that a subsequent application for the execution of the decree was time barred, it was held that there was ground for interference by the High Court in revision. *BHAIROO PRASAD v. AMINA BEGAM* (1915) L. L. R. 38 All. 690

Sch. II, cls. 15, 16—

See SPECIFIC PERFORMANCE

I. L. R. 43 Calc. 59

PROVISO.

object of—

See PRESS ACT (I OF 1910) s. 3 (1).
PROVISO I. L. R. 39 Mad. 1164

PUBLIC GAMBLING ACT (III OF 1887).

ss. 1, 3—"Place"—*Bullock run of disused well surrounded by low wall of loose bricks—"Common gaming house"* Held, that the lower end of a bullock run round which, in the shape of a semi circle, was raised a low wall of loose bricks, was a 'place' within the meaning of the Public Gambling Act 1887.

EMPEROR v. MIAN DIN (1915)

I. L. R. 38 All. 47

PUBLIC POLICY.

See TRAFFICKING IN OFFICES

I. L. R. 43 Calc. 115

PUBLIC STREET.

See RAILWAY L. R. 43 I. A. 310

PUBLIC WAY.

See WAY.

obstruction to, by building a wall—
See PENAL CODE (ACT XLV OF 1860),
ss 147, 426, 447
I. L. R. 39 Mad. 57

PUBLIC WORKS DEPARTMENT.

negligence of, servants of—
See TOWN I. L. R. 39 Mad. 351

PUBLICATION.

See COPYRIGHT I. L. R. 38 All. 484

PUISNE MORTGAGEE.

rights of—
See CIVIL PROCEDURE CODE (1908), O
XXXIV, RR 4 AND 5
I. L. R. 38 All. 393

PURCHASE OF ARMS.

See FORGERY I. L. R. 43 Calc. 421

PURCHASER.

See PURCHASER OF A SHARE.

in Court auction—

See SUBSTITUTION OF PROPERTY AND
SECURITY I. L. R. 39 Mad. 283

PURCHASER OF A SHARE.

See SALE FOR ADEPTORS OF REVENUE
I. L. R. 43 Calc. 46

PURDANASHIN LADY.

1. Document executed by—*Suit for cancellation on the ground of fraud.* The plaintiff, a purdanasihin lady, executed a conveyance in favour of the defendant, the consideration for which consisted of money due on a mortgage bond previously given by her to the purchaser and an additional sum paid at the time of sale. It appeared that on the mortgage bond she wrote with her own hand "this bond executed by me is correct" and then signed her name. Similarly on the conveyance she wrote "this deed of sale which I have executed is true and correct

bond and the deed of sale signed by her without the document being read out and explained to her, that she did not get any independent legal advice in connection with the documents and did not get any consideration for them. In her deposition the plaintiff stated that she had put her signature on blank sheets, which had subsequently been filled up without her knowledge or consent by the defendant and turned into the mortgage bond and the sale deed: Held, that as the documents

PURDANASHIN LADY—contd.

undoubtedly bore the plaintiff's signature, the burden was upon her to establish that the recitals contained therein were untrue. **BANSIRAM v. PANCHAMI DAS** (1914) . 20 C. W. N. 638

2. ————— *Person trusted by her as manager and managing her properties, but acting adversely to her interests, acts of, if bind her—Fiduciary relationship—Betrayal of trust—Fraud by fiduciary, when may be condoned—Nullity—Sham arbitration proceedings and award—Limitation if applies to defence—Time for recovery to run from termination of relationship—Award if may be upheld as family arrangement.* *H*, a Hindu, who had separated from his brothers, acquired considerable property by money-lending and died in 1892 leaving a widow *K* and several daughters and a daughter's son *P* by a pre-deceased wife. *K*, who was not a woman of business, came under the influence of *F*, a separated brother of *H*, and *F* managed her properties and *K* believed that he was acting as her manager until he died in 1905. Shortly, after *H*'s death, *F* in collusion with *P* got up a sham arbitration proceeding, which resulted in an award by which the properties left by *H* were divided up amongst the various members of the family, *K* receiving only a share. The true nature and effect of the proceedings were concealed from her and she was misled and betrayed by *F* and *P*, both of whom had interests adverse to her and were acting in their own interests. In a suit by another member of the family to enforce, in his right under the award, a mortgage effected by *F* from advances made out of properties left by *H*, *K* denied the plaintiff's title altogether and claimed the entire mortgage money in her right as the widow of *H*. The High Court held that the arbitration was a sham, that it had not been shown that *K* had any independent advice or understood the effect of the so-called award on her interests and believing that she never knowingly consented to the division of her husband's estate dismissed the suit. *Held*, by the Judicial Committee (without dissenting from the conclusions of the High Court), that from the death of *K*'s husband, *F* stood to her in a fiduciary relationship which continued till he died and she was entitled to receive from him a full disclosure of all the affairs which concerned her. That *F* having betrayed the confidence *K* reposed in him, the question in the case was not whether *K* knew what she was doing, had done or proposed to do, but how her intention to act was produced: whether all that care and providence was placed round her as against those who advised her, which from their situation and relation with respect to her, they were bound to exert on her behalf. That fraud, such as there was in this case, could not be condoned unless there was full knowledge of the facts and of the rights arising out of those facts and the parties were at arm's length. *Huguenin v. Baseley*, 14 Ves. Jun. 273, and *Moxon v. Payne*, 8 Ch. App. 881, referred to. That the Indian Limitation Act was no bar to her defence, and even if she were suing to recover property of which she was deprived

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by the award, time would not, under the circumstances of the case, begin to run against her until *F* died. That the award regarded as an award, or as a document embodying a family arrangement, was a nullity. **SRI KISHAN LAL v. KASHMIRO** (1916) . 20 C. W. N. 957

Q**QADI.**

See **WAKE** . I. L. R. 43 Calc. 467

R**RAILWAY.**

————— *Public Street—Street vested in Municipality—Power to Cross—Land Acquisition Act (I of 1894)—Indian Railways Act (IX of 1890), s. 7.* The Indian Railways Act, 1890, s. 7, as amended by s. 1 of Act IX of 1896, provides that, subject, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a railway administration may, for the purpose of constructing a railway, (*inter alia*) construct across any streets such lines of railway as the railway administration think proper; the powers conferred by the section are made subject to the control of the Governor General in Council. The respondents constructed lines of railway across a street vested by statute in the appellant Municipal Corporation without obtaining their consent and without taking proceedings under the Land Acquisition Act, 1894: *Held*, that the construction of the railway lines across the street was not an acquisition of immoveable property within the meaning of s. 7 of the Indian Railways Act, 1890, and that the respondents had power under that section, as amended, to lay the lines without obtaining the consent of the appellant corporation. **BOMBAY CORPORATION v. GREAT INDIAN PENINSULA RAILWAY** . L. R. 43 I. A. 310

RAILWAY RECEIPT.

See **CONTRACT ACT** (IX of 1872), s. 103.
I. L. R. 40 Bom. 630

————— **endorsement of—**

See **SALE OF GOODS**.
L. R. 43 I. A. 164

————— **not a delivery order—**

See **CONTRACT ACT** (IX of 1872), s. 47.
I. L. R. 40 Bom. 517

RAILWAYS ACT (IX OF 1890).

————— ss. 3 (6), 77, 140—*Railway administered by Government—Suit by consignee for price of goods consigned and mislaid by railway—Notice*

RAILWAYS ACT (IX OF 1890)—*contd.*s. 3—*concl'd*

dary Act case notice

under a. 77 of the Railways Act is [in view of the definition of the words "Railway Administration" in s 3 (6) of the Act] effective, if served on Government, and s 140 does not mean that the "Manager" is the only person on whom notice can be served, but that if notice is served on the Manager, it must be served on him in the manner provided in s 140. *The Secretary of State v Dipchand Poddar*, 1 L R 24 Cal 306, *Great Indian Peninsula Railway v Chandra Bai*, 1 L R 28 All 552, *Janak Das v The Bengal Nagpur Railway Company*, 16 C W N 356, *Perannan Chetty v South Indian Railway Company*, 1 L R 22 Mad 137, and *Nadiar Chand Saha v Wood*, 1 L R 35 Cal 193, considered. *Per D CHATTERJEE, J Semble*. In the absence of evidence showing that the "Agent" of a railway administered by Government is the Manager, or that the "Traffic Manager" is not the Manager and regard being had to the rule printed and published in the Fare and Time Table of the Railway that "references regarding delay in transit or loss of goods, parcels, luggage or other articles or claims for compensation and refunds should be addressed to the Traffic Manager," notice to the Traffic Manager may be considered sufficient under s 140 of the Act. In a suit by consignors of goods which were not alleged to have been lost, but were found to have gone astray after they were delivered to the Railway, for recovery of their price with compensation, the defendant did not plead or prove any loss and on the other hand alleged that the goods had not been delivered at all, nor was there evidence when the goods were to be delivered. *Held, per CURRIE*, that neither Art 30 nor Art 31 applied, and (*Per D CHATTERJEE J.*), that the suit was governed by Art 115 of the 1st Schedule to the Limitation Act. *Mohan Singh Chuan v Conder*, 1 L R 7 Bom 478, and *Danmull v British India Steam Navigation Company*, 1 L R 12 Cal 477, referred to. *RADHA SEAM BASAK v THE SECRETARY OF STATE FOR INDIA* (1916) 20 C. W. N. 790

s. 7—

See RAILWAY L. R. 43 I. A. 310

s. 72 (2) (a)—*Risk note now to be signed in order to bind consignor*. The provision of s 72, cl (2), requiring risk notes to be signed by or on behalf of the person sending or deliver should on who time hat was not a sufficient compliance with the requirements of s 72, cl (2). *Holmwood, J*—The person who signs the risk note must write his own name either by his own hand or by the hand of an agent who

RAILWAYS ACT (IX OF 1890)—*concl'd*s. 72—*concl'd*

must be disclosed and have authority. *MAHA-BARSHA BANKAPORE v SECRETARY OF STATE FOR INDIA* (1915) . . . 20 C. W. N. 685

ss. 77, 140—*Notice on Claims Superintendent, if notice on Agent—Suit for compensation for loss of goods consigned—Limitation—Limitation Act (IX of 1908), Sch I, Art 30*. In the absence of evidence to prove that the Claims Superintendent was authorised by the Agent to receive notices on his behalf. *Held*, that a notice of claim served on the former was not served in compliance with the provisions, of s 140 of the Railways Act. The law requires that the notice should be on the Agent and whether a particular officer is authorised by the Agent to receive such notice on his behalf is a question of fact that must be decided on evidence. *Woods v Meher Ali*, 13 C W N 24, distinguished. *Janak Das v The Bengal Nagpur Railway Co*, 16 C W N 356, *The East Indian Railway Co v Madho Lal*, 17 C W N 1134, and *Radha Kissen v The East Indian Railway Co* 19 C W N 62, referred

of or theft by its servants. *Held (semble)* that the suit was governed by Art 30 of the 1st Schedule to the Limitation Act. *EAST INDIAN Ry Co v RAM AUTAR* (1915) . . . 20 C. W. N. 698

RAILWAY'S INTERESTS.

purchase of—

See LANDLORD AND TENANT I. L. R. 43 Cal. 164

RATEABLE DISTRIBUTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss 47, 73, 104

I. L. R. 39 Mad 570

See LIMITATION ACT (IX OF 1908) Sch I, ARTS 62, 120 I. L. R. 39 Mad 62

order for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss 47, 73, 104

I. L. R. 39 Mad. 570

RATING OF PROPERTY.

See ADEN SETTLEMENT REGULATION (VII OF 1900), s 13

I. L. R. 40 Bom. 446

RECEIVER.

See COMMON MANAGER

I. L. R. 43 Cal. 986

See FRAUDULENT PREFERENCE

I. L. R. 43 Cal. 640

See OFFICIAL RECEIVER

application against the legal representatives of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4

I. L. R. 39 Mad. 584

RECEIVER—*concl.*

death of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.

I. L. R. 39 Mad. 584

misappropriation by—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.

I. L. R. 39 Mad. 584

1. ———— *Sale by Receiver—*
Civil Procedure Code (Act V of 1908), O. XL, r. 1—
Receiver, authority of, to sell property and execute
the conveyance including share of infant defendant
—Practice—Trustees Act (XV of 1866), ss. 8, 20
and 32. In a partition suit in which a Receiver
is authorized to sell properties, there can be no
difficulty in directing him to convey the prop-
erties. Under O. XL, r. 1, cl. (d) of the Code,
the Court may confer on a Receiver all such
powers for the realisation of properties and the
execution of documents as the owner has. The
Receiver may be, therefore, directed to execute
a conveyance including the share of an infant
defendant. In all sales whether by the Court or
under the Court or by direction of the Court out
of Court, the purchaser is bound to satisfy himself
of the value, quantity, and title of the thing sold,
just as much as if he were purchasing the same
under a private contract. The sale certificate
does not transfer the title; it is evidence of the
transfer. Minaloonnessa Bibee v. Khatoonnessa
Bibee, I. L. R. 21 Calc. 479, Golam Hossein Cassim
Ariff v. Fatima Begum, 16 C. W. N. 391, and
Davis v. Ingram, [1897] 1 Ch. 477, referred to.
BASIR ALI v. HAFIZ NAZIR ALI (1915).

I. L. R. 43 Calc. 124

Order refusing to re-
 move Receiver, if appealable—*Resignation of one of*
two joint Receivers, if terminates order appointing
Receiver. No appeal lies against an order refusing
to remove a Receiver who has already been
appointed. Where two persons were appointed
joint Receivers to an estate, the order appointing
them did not come to an end on the resignation
of one of them so as to leave the estate without
a Receiver and without the protection for which
a Receiver is, in fact, appointed. EASTERN MORT-
GAGE AND AGENCY CO., LTD. v. PREMANANDA
SAHA (1914) . . . 20 C. W. N. 789

RECORDS, POWER TO CALL FOR.

Special Tribunal—
Calcutta Improvement Act (Beng. V of 1911), s. 71,
cl. (c)—Land Acquisition Act (I of 1894), s. 53—
Practice. The power to call for records is a power
which is undoubtedly inherent in the Judge of a
Land Acquisition Court and consequently in the
Special Tribunal constituted under the Calcutta
Improvement Act. Golap Coomary Dassee v.
Raja Sundar Narayan Deo, 4 C. L. R. 36, followed.
NARESH CHANDRA BOSE v. HIRA LAL BOSE (1915).
 I. L. R. 43 Calc. 239

RECTIFICATION.

See MISTAKE . I. L. R. 43 Calc. 217

RECTIFICATION OF REGISTER.

of shareholders—

See COMPANIES ACT (VI OF 1882), ss. 58,
147 . . . I. L. R. 40 Bom. 134**REDEMPTION.**

See EQUITY OF REDEMPTION.

See LIMITATION ACT (IX OF 1908), SCH.
1, ARTS. 140, 141.

I. L. R. 40 Bom. 239

See MORTGAGE . I. L. R. 38 All. 148, 540

suit for—

See DEKKHAN AGRICULTURISTS' RELIEF
ACT (XVII OF 1879), ss. 3 (w), 12,
13 . . . I. L. R. 40 Bom. 655See MADRAS CIVIL COURTS ACT (III OF
1873), ss. 12, 13.

I. L. R. 39 Mad. 447

See TRANSFER OF PROPERTY ACT (IV OF
1882), ss. 60, 67—93.

I. L. R. 39 Mad. 896

Civil Procedure Code
 (1877), s. 582—*Decree for redemption reversed on*
appeal—Restitution—Jurisdiction of Court to which
application for restitution is made to award mesne
profits which are not given by Appellate Court decree
—Suit to redeem. A mortgagor sued for redemption
of a usufructuary mortgage and obtained a decree
from the Subordinate Judge, under which, on
payment of the sum decreed to the mortgagee,
he was put in possession of the mortgaged prop-
erty; but the mortgagee appealed to the High
Court, which increased the amount payable on
redemption by a sum which the mortgagor failed
to pay, and the mortgagee thereupon applied
to the Subordinate Judge for possession and for
mesne profits for the period during which he
had been out of possession. Held, (upholding
the decisions of the Courts in India), that the
Subordinate Judge had power under s. 583 of
the Code of Civil Procedure, 1877, to award
mesne profits, although they had not been
expressly given by the decree of the High Court.
If the decree was wrong the parties aggrieved
had their remedy either by appeal to the High
Court or by an application for revision. The
proceedings taken under the decree of the
Subordinate Judge, culminating in the sale at
which the mortgagee purported to purchase the
equity of redemption, were valid, and the appel-
lant an assignee of the rights of the mortgagor,
was held not entitled to redeem. PARBHU DAYAL
v. MAKBUL AHMAD (1915).

I. L. R. 38 All. 163

REDEMPTION SUIT.See DEKKHAN AGRICULTURISTS' RELIEF
ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

REGISTERED COMPANY.

See LIQUIDATOR . I. L. R. 43 Calc. 586

REGISTRATION.

See CIVIL PROCEDURE CODE (1908), O.
XXIII, R. 3 I. L. R. 38 All. 75

See EVIDENCE ACT (I OF 1872) s 70
I. L. R. 38 All. 1

See REGISTRATION ACT

See TRANSFER OF PROPERTY ACT (IV OF
1882), s 54 I. L. R. 40 Bom. 313

REGISTRATION ACT (XVI OF 1908).

s. 17—

See CIVIL PROCEDURE CODE (1908), O.
XXIII, R. 3 I. L. R. 38 All. 75

ss. 17, 49—*Registration—Petition to Revoke Court in mutation proceedings—Compromise—Family settlement* A separated Hindu created two usufructuary mortgages on portions of his estate, and then died leaving a widow and a daughter. The widow held possession for her life time and created a third usufructuary mortgage. She died. Her daughter laid claim to the estate and applied for entry of her name in the revenue records. M, one of the reversioners, contested her application, urging that her father was joint with him and not separate. The parties came to terms, orally. The daughter agreed to give up her claim, M, in return, agreed to take the estate, to pay off the mortgages and to pay a certain sum to the daughter. They two then filed a joint petition in which it was stated that the parties had come to terms. This statement in the petition was followed by another on behalf of the daughter that as she had given up her claim to the estate she had no objection to muta-

which he had promised to pay, executed two bonds in favour of her sister's husband, but he never paid the money due thereon, on the contrary he managed to get the bonds back and kept them. Some time afterwards the daughter sued to recover possession of the property in dispute. Held, that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages. *JAGRAN V BISHESHAR DUBEY* (1916) I. L. R. 38 All. 366

s. 35—*Registration of deed of gift—Death of donor—Execution admitted by donee—*

of the deed before the Registering Officer
AKAROV CHANDRA MAJHI v. MANMATHA NATH
CHATTERJEE (1916) . . . 20 C. W. N. 1345

s. 50—

See SPECIFIC RELIEF ACT (I OF 1877),
s. 27 . . . I. L. R. 38 All. 184

REGISTRATION ACT (XVI OF 1908)—*contd*

s. 60—

See EVIDENCE ACT (I OF 1872), s 70
I. L. R. 38 All. 1

ss. 82, 83—*Permission of registration officer a necessary preliminary to a prosecution. Held, that the permission referred to in s 83 of the Indian Registration Act, 1908, is a necessary condition precedent to the prosecution of any person for an offence mentioned in s. 82 of the Act. King Emperor v. JUAN, 27 Indian Cases 208, referred to. EMPEROR v. HUSAIN KHAN (1916) . . . I. L. R. 38 All. 354*

REGISTRATION OFFICER.

See REGISTRATION ACT (XVI OF 1908),
ss 82, 83 I. L. R. 38 All. 354

REGULATIONS

1778—I—

See CONSTRUCTION OF DOCUMENT
I. L. R. 38 All. 570

1799—V—

s. 5—*Order if can be made, when no regular suit has been brought by the claimants. When no regular suit has been brought by the persons who claim the property dealt with by the Court, an order under s 5 of Reg V of 1799 is ultra vires. BALIA KOER v. BANDHAN SARKI (1914) . . . 20 C. W. N. 823*

1803—XXXI—s. 8—

See CONSTRUCTION OF DOCUMENT
I. L. R. 38 All. 230

1806—XVII—

See CONSTRUCTION OF DOCUMENT
I. L. R. 38 All. 570
See MORTGAGE I. L. R. 38 All. 97

RE-HEARING.

appellant not entitled to—

See APPEAL, PARTIES TO AN
I. L. R. 39 Mad. 386

RELEASE.

See LIQUIDATOR . I. L. R. 43 Calc. 586

See STAMP ACT (II OF 1899), SEC. I,
ART. 55 . I. L. R. 38 All. 56

of some of joint judgment-debtors—

See JOINT JUDGMENT DEBTORS
I. L. R. 39 Mad. 548

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

Change of village from one district to another, for revenue purposes—Religious institution in the village—Power of original committee of the original district to control the institution—No power for the committee of the new district to appoint trustees. The Religious Endowments Act (XX of 1863), contemplates the creation of division or district committees once for all

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd.*

soon after the passing of the Act to take the place of the Board of Revenue and the local agents referred to in Regulation VII of 1817. It is only the committee that is originally appointed in that behalf or its successor that can exercise jurisdiction over a particular religious institution and any order of Government transferring a certain village in which a particular religious institution is situated from one district to another for purposes of revenue administration does not deprive the original temple committee of its powers over the institution (such as appointing trustees for the same) or enable the committee of the new district to which the village is transferred to exercise any power over the institution. *RANGAPPA v. BHIMAPPA* (1915). I. L. R. 39 Mad. 949

s. 3—*Suit for scheme for a temple falling under s. 3—Civil Procedure Code (Act V of 1908), s. 92, jurisdiction of Courts to frame a scheme under—Temple committee, powers of.* Ever since 1842 when the Board of Revenue handed over the management of the temple of Srirangam to certain trustees, one trustee was chosen here-
ditarily every year from a certain family in the locality called the "Sthalathars" and two other trustees were appointed till 1863 by the Board and later on by the temple committee formed under the Religious Endowments Act (XX of 1863). In several litigations connected with the temple, the temple was treated as one falling under s. 3 of Act XX of 1863. *Held*, that the temple was one falling under s. 3 and not under s. 4 and was thus subject to the control of the temple committee. Though the Courts cannot interfere with the statutory powers conferred upon the members of the temple committee so as to deprive them of their statutory functions, yet the Court has jurisdiction to frame a scheme under s. 92, Civil Procedure Code (Act V of 1908) in respect even of a temple subject to the control of the temple committee, and introduce changes in its administration which the committee is not legally competent to introduce and which are desirable and necessary to meet the altered circumstances of the time. Considering that the actual management of the temple must vest in the trustees subject to the statutory control of the committee, their Lordships held it undesirable in framing a scheme to introduce, as the lower Court did, a new body of people called a Board of Control over the trustees and hence abolished the same. In the result their Lordships framed a scheme for the temple providing among other things for (a) the appointment of two additional trustees for the better management of the temple, (b) the tenure of office of the trustees appointed being only for five years, (c) the preparation of annual budget and audit of temple accounts and (d) the appointment of a cashier under the trustees. *Per Curiam* :—The powers of the committee or any other statutory body do become suspended by the occurrence of a

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*concl'd.*

s. 3—*concl'd.*
vacancy among its members. Powers of a temple committee considered. *Santhalva v. Manjanna Shetty*, I. L. R. 34 Mad. 1, dissented from. English and Indian cases reviewed. *SITHARAMA CHETTY v. SIR S. SUBRAHMANYA IYER* (1916). I. L. R. 39 Mad. 700

RELIGIOUS INSTITUTION.

transfer of—
See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) . I. L. R. 39 Mad. 949

RELINQUISHMENT.

See FAMILY SETTLEMENT. I. L. R. 38 All. 335

REMAND.

See AGRA TENANCY ACT (II OF 1901), ss. 182, 183 . I. L. R. 38 All. 181
See AGRA TENANCY ACT (II OF 1901), s. 202 . I. L. R. 38 All. 533
See CIVIL PROCEDURE CODE (1908), s. 109 . I. L. R. 38 All. 150

by Appellate Court—
See Costs . I. L. R. 39 Mad. 476

1. *Remand of case on issue only raised on second appeal—Case decided by lower Courts on issues of fact—Civil Procedure Code, 1882, s. 584—Absence of ground of law to support second appeal—Costs—Suit to eject a paik in service of zamindar holding under kabuliati with Government—Onus of proving land as chowkidari chakran—Right to dismiss paik.* The plaintiff, a zamindar under a kabuliati with the Government made by his predecessor in title in 1801, sued to eject from a jaghir within his zamindari a paik in his service whom he had dismissed from his service with notice to quit. The Secretary of State for India, now sole respondent, was also made a defendant, as the Government disputed the zamindar's right to dismiss the paik. The plaintiff's case was that there were two classes of paiks, the Government paiks who performed only the duties and who could be dismissed by the Government, and that class alone came within the terms of the kabuliati, and private paiks who performed services personal to the zamindar, and that the paik in suit belonged to the latter class and the zamindar was therefore entitled to dismiss him. Both the Subordinate Judge and the District Court held that the paik defendant did not come within the terms of the kabuliati, and found concurrently on the facts in favour of the plaintiff's contentions, but the District Judge gave no specific reasons for his decision. The High Court admitted a second appeal by the respondent on an issue not previously raised in the case, "whether the land in suit had been excluded from assessment at the settlement in 1792 as being appropriated for the maintenance of

REMAND—contd

parks performing police duties, and whilst agreeing with the lower Courts on the construction of the *kabuliat*, ignored the findings of fact, and remanded the appeal for the trial of the fresh issue, making the plaintiff who had succeeded, pay all the costs then incurred. *Held*, that the High Court in second appeal was by s 584 of the Code of Civil Procedure, 1882, then in force, bound by the findings of fact of the District Judge who "had considered the evidence and saw no reason for differing from the findings of the Subordinate Judge." The High Court could therefore only allow the appeal on a ground of law, and on the only question of law that Court agreed with the Court below. Even if it were competent to the High Court to remit a case for

ing of all costs. The respondent did not suggest he was taken by surprise or had discovered fresh evidence of which he was previously unaware. The omission to raise the issue early in the case appeared to be deliberate, the onus of proving it was on the respondent, and there was little, if any, evidence to support it. The appeal was consequently allowed. **RAM CHANDRA BHANJ DEO v SECRETARY OF STATE FOR INDIA (1916)**

I. L. R. 43 Calc. 1104

2. ——— *Remand on a preliminary point—Powers of lower Appellate Court to reverse and remand—Civil Procedure Code (Act V of 1908), s 107, sub s (1), cl (b), sub s (2), O XXI, r 23* As the body of the Code creates jurisdiction (while the rules indicate the mode in which it is to be exercised), it is expressed in more general terms, but has to be read in conjunction with the more particular provisions of the rules. S 107, sub s (1), cl (b) of the Code is subject to the conditions and limitations prescribed by the rules and in the case of a lower Appellate Court the power of reversal and remand is limited to the position described in r 23, O XXI. **MANI MOHAN MANDAL v RAMTARAN MANDAL (1915)**

I. L. R. 43 Calc. 148

3. ——— *Remand after addition of parties by Appellate Court—Amendment of plaint—Whether whole case remanded in consequence—Civil Procedure Code (Act V of 1908), s 107, O XXI, r 23, 25* There are other possible cases of remand which are not included in O XXI. **Nabin Chandra Tripathi v Prankrishna De I L R 41 Calc 108**, distinguished. In the Code of Civil Procedure, 1908, the Legislature has given the power of amendment to the Court of Appeal and, as a necessary outcome, it has the power of remanding the whole case when an amendment of plaint is granted and when parties are added. The general provision in s 107 for a remand is not governed or limited by O XXI alone, but is subject to such conditions and limitations as may be prescribed in the rules and orders, the amendment of a plaint and addition of parties

REMAND—contd

in a Court of appeal being among them. **Uzine Ali Sardar v Savai Behara (1916)**

I. L. R. 43 Calc. 938

4. ——— *Order of appeal—Court directing Court of first instance to remit findings on issues not tried—Decision on other issues in the remand order if binds Judge or his successor at final hearing—Decision, if preliminary decree or interlocutory order—Civil Procedure Code (Act V of 1908), O XXI, r 23, 25* Where a suit for recovery of possession in which the defendant besides denying plaintiffs' title set up certain pleas in bar (limitation, etc.), was dismissed by the first Court on the merits, but the lower Appellate Court finding in favour of the plaintiff on the merits, the case was remanded to the first Court for finding on the issues in bar which had not been tried by the first Court. *Held*, that upon receipt of the findings of the first Court on these issues, the lower Appellate Court was not bound to reconsider its findings on the merits and thus whether the officer before whom the appeal finally came for hearing was the same or another officer. *Per* RICHARDSON J.—An opinion incidentally or provisionally expressed in a remanding judgment would not amount to a final adjudication so as to conclude the parties, but an adjudication by the remanding Judge would bind him or his successor at the final hearing. One test which may be suggested for the purpose of determining whether such an adjudication is or is not final and conclusive so far as it goes is whether it does or does not amount to a preliminary decree. *Semble*. The remand order in this case amounted to a preliminary decree in so far as it disposed of the merits of the case. *Per* MULLICK, J.—It seems to be well settled that though it is open to a Court to revise after remand interlocutory decisions which were made either by itself or by an officer of co-ordinate jurisdiction, yet as a matter of practice a Court will not and ought not to do so. When, however, the interlocutory decision amounts to a preliminary decree within the meaning of s 2 of the Civil Procedure Code, the Court is incompetent to revise that decree till it is duly set aside or amended according to law. That the decision on merits contained in the remand order did not amount to a preliminary decree. **HIRA LAL PAL v ETEBAR MANDAL (1915)**

20 C. W. N. 43

5. ——— *Remand order by Appellate Court without retaining case on file—Whole case if open before Court to which case remanded—Limitation of scope of appeal remanded by High Court* In strict law a remand made by an Appel

But the High Court in the exercise of its powers of supervision under the Charter rightly assumes in certain cases authority to limit the scope of certain appeals remanded to the lower Court without keeping them on its own file. But when—

REMAND—concl'd.

ever this is done it is absolutely essential that the High Court should lay down clearly without any possibility of mistake that it did intend to limit the scope of the appeal to certain specified questions. **KARTICK CHANDRA DAS v. SATYA NIDHI GHOSAL (1915)** 20 C. W. N. 584

REMOVAL OF STRUCTURES.

See MUNICIPAL LAW.

L. R. 43 I. A. 243

RENT.

See RENT DECREE.

See RENT, SUIT FOR.

See U. P. LAND REVENUE ACT (III OF 1901), ss 56, 86.

I. L. R. 38 All. 286

non-payment of—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 189. I. L. R. 39 Mad. 60

payment of, for sixty years—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 13, CL. (3).

I. L. R. 39 Mad. 84

suit for—

See LESSOR AND LESSEE.

I. L. R. 39 Mad. 939

RENT DECREE.

See SALE.

I. L. R. 43 Calc. 263

Evidence—Previous ex parte rent decree, admissibility of, as evidence of relationship between parties—Presumption of continuance thereof—Evidence Act (I of 1872), s. 114, illus. (d). A previous *ex parte* rent decree (between the same parties) is not merely an item of evidence, but is conclusive as to the relationship between the parties at that time. Its value becomes more apparent since the terms of s. 114, illus. (d) of the Evidence Act permit the Court to make a presumption as to the continuance of the state of things. **HIRANMOY KUMAR SAHA v. RAMJAN ALI DEWAN (1915).** I. L. R. 43 Calc. 170

RENT, SUIT FOR.

Title Paramount, dis possession by—Onus of proof—Apportionment of rent—Evidence Act (I of 1872), s. 102. Where a tenant is sued for rent, he can set up eviction by title paramount to that of his lessor as an answer; and if evicted from part of the land, an apportionment of the rent may take place; but the onus is on the lessor to show what is the fair rent of the lands out of which the tenant was not evicted. **Gopamund Jha v. Lalla Govinda Prosad, 12 W. R. 109, referred to. SURENDRA NARAIN ROY CHOWDHURY v. DINA NATH BOSE (1915).** I. L. R. 43 Calc. 554

RENUNCIATION.

See PROBATE

REPRESENTATION.

See CONTRACT. I. L. R. 39 Mad. 509

RESCUE FROM LAWFUL CUSTODY.

Lawful apprehension, resistance to—Opium—Person selling article as opium which turns out not to be the same—Arrest and detention of such person—Legality of arrest—Escape from such arrest—Opium Act (I of 1878), s. 15—Penal Code (Act XLV of 1860), ss. 224 and 225. Where a person purports to sell an article as opium which afterwards turns out not to be the same and he is arrested but escapes with the aid of others:—**Held**, that his arrest and detention are lawful under s. 15 of the Opium Act (I of 1878), and that his conviction under s. 224 and that of the others under s. 225 of the Penal Code are legal. It is an offence for a person to escape from custody, after he has been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. **Deo Sahay Lal v. Queen-Empress, I. L. R. 28 Calc. 253, approved. MOHAM-MED KAZI v. EMPEROR (1916).** I. L. R. 43 Calc. 1161

RESIDENCE.

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 153

RESIDENT AT ADEN.

See ADEN SETTLEMENT REGULATION (VII OF 1900), s. 13.

I. L. R. 40 Bom. 446

RES JUDICATA.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11.

I. L. R. 40 Bom. 210, 614, 662, 679

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11. I. L. R. 39 Mad. 1202

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 16. I. L. R. 38 All. 289

See HINDU LAW—ALIENATION BY WIDOW. I. L. R. 43 Calc. 417

See SARANJAM. I. L. R. 40 Bom. 606

See WAKF, VALIDITY OF. I. L. R. 43 Calc. 158

rule of—

See DECLARATORY DECREE, SUIT FOR. I. L. R. 43 Calc. 694

Civil Procedure Code (Act V of 1908), s. 11—Sale of Khoti lands on the basis that they are alienable—Subsequent suit between the parties on the allegation that the lands were inalienable—Khoti Settlement Act (Bombay Act I of 1880), s. 9. Certain Khoti lands were sold in execution proceedings between the parties on the footing that they were alienable, and purchased by the defendant. The plaintiff then filed a suit to recover possession of the lands on the allegation that the lands being occupancy lands their sale was invalid under s. 9 of the Khoti Settlement Act, 1880. **Held**, that the plaintiff

I. L. R. 40 Bom. 666

RES JUDICATA—concl'd.

allegation was barred by *res judicata* inasmuch as the sale in execution decided inferentially as between the plaintiff and the defendant that the lands sold were not occupancy lands. **KASHI-NATH KRISHNA v DHONDHET (1916)**

I. L. R. 40 Bom. 675

2. ————— *Rule of res judicata not a mere technical rule* The application of the rule of *res judicata* by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law **SHEOPARSAN SINGH v RAMNANDAN PRASHAD NARAYAN SINGH (1916)**

**20 C. W. N. 738
I. L. R. 43 Calc. 694**

RESPONDENT.

————— death of—

See **APPEAL, PARTIES TO AN.**

I. L. R. 39 Mad. 386

RESTITUTION.

See **CIVIL PROCEDURE CODE (1908), s 144** **I. L. R. 38 All 240**

See **REDEMPTION I. L. R. 38 All. 163**

RESULTING TRUST.

See **SETTLEMENT BY A HINDU WOMAN ON TRUSTS I. L. R. 40 Bom. 341**

RESUMPTION.

See **ASSESSMENT I. L. R. 43 Calc. 973**

RETRIAL

See **CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 233, 421, 537**
I. L. R. 39 Mad. 527

REVENUE.

————— attachment of arrears of —

See **CONTRACT ACT (IX OF 1872), ss 69 70** **I. L. R. 39 Mad. 795**

————— covenant to pay—

See **CONSTRUCTION OF DOCUMENT**
I. L. R. 38 All. 230

REVENUE COURT.

See **MADRAS ESTATES LAND ACT (I OF 1908), ss 189, ETC**
I. L. R. 39 Mad. 239

REVENUE OFFICER.

See **JURISDICTION I. L. R. 43 Calc. 136**

REVENUE SALE.

See **SALE FOR ARREARS OF REVENUE**
I. L. R. 43 Calc. 779

See **TRANSFER OF PROPERTY ACT (IV OF 1882), s 65 (c)**
I. L. R. 39 Mad. 959

REVENUE SALE LAW (ACT XI OF 1859).

See **SALE FOR ARREARS OF REVENUE**

s. 37 (f)—*purchaser at revenue sale, if may eject lakherajdar from land which has been planted or built upon—Incumbrance, how annulled*

REVENUE SALE LAW (ACT XI OF 1859)—concl'd

————— s. 37—concl'd.

S 37 of the Revenue Sale Law does not protect land held without payment of rent upon which dwelling houses, manufactories or other permanent buildings have been erected or whereon gardens, plantations, etc, have been made The assignee or transferee of the auction purchaser at a Revenue sale is entitled to exercise the rights of a purchaser It is not essential on the part of the auction purchaser or his assignee who seeks to annul an incumbrance to give a formal written notice to avoid it All that is necessary is to notify to the incumbrancer by some unequivocal act the intention to annul **KRISHNA KALYANI DAS v R BRAUNFELD (1915)**

20 C. W. N. 1028

————— s. 54—

See **SALE FOR ARREARS OF REVENUE**

I. L. R. 43 Calc. 46

REVERSIONARY INTEREST.

See **HINDU LAW—PARTITION**

I. L. R. 43 Calc 1118

————— attachment of—

See **HINDU LAW—WIDOW**

I. L. R. 39 Mad. 565

REVERSIONER.

See **CIVIL PROCEDURE CODE (ACT V OF 1908), O XIII, r 1 (3)**
I. L. R. 39 Mad. 987

See **DECLARATORY DECREE, SUIT FOR**
I. L. R. 43 Calc. 694

See **HINDU LAW—REVERSIONER.**

See **LIMITATION ACT (IX OF 1908), SCH I, ART 91** **I. L. R. 40 Bom. 51**

————— suit by—

See **LIMITATION ACT (IX OF 1908), SCH I, ARTS 140, 141**

I. L. R. 40 Bom. 239

REVIEW.

See **APPEAL I. L. R. 43 Calc. 178**

See **ARBITRATION.**
I. L. R. 43 Calc. 290

See **REVIEW OF JUDGMENT**

————— High Courts power of—

See **CRIMINAL PROCEDURE CODE, s 369**
I. L. R. 38 All. 134

Review of High Court judgment—Application for review presented to Court presided over by Chief Justice under special circumstances—Deputy Registrar certifying application not in order—Application, if must be presented within seven days of return of application with such certificate. The application for review was properly presented to the Court presided over by the Chief Justice, as there was no time after the application was put in order to present it to the

REVIEW—concl'd.

bench which had disposed of the appeal in the first instance, one of them having retired from the Court some days before and the other having gone away on furlough two days after that date. R. 4 of Chap. XI of the Appellate Side Rules was intended to apply to the case where the Deputy Registrar gives a certificate that the review application was in order and not to cases where the certificate is to the effect that the proceedings were not in order. **GANGADHAR KARMAKAR v. SHEKHAR BASINI DASYA (1916).** 20 C. W. N. 967

REVIEW OF JUDGMENT.

See CIVIL PROCEDURE CODE (1908), O. XLVIII, R. 9.
I. L. R. 38 All. 280

See CRIMINAL PROCEDURE CODE, s. 369.
I. L. R. 38 All. 134

REVISION.

See COMPOSITION OF OFFENCE.
I. L. R. 43 Calc. 1143

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 435, 439, 133.
I. L. R. 39 Mad. 537

See CRIMINAL PROCEDURE CODE, s. 476.
I. L. R. 38 All. 695

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 25.
I. L. R. 38 All. 690

in petition by private parties—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 439, 422, 423.
I. L. R. 39 Mad. 505

power of the High Court to interfere in—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 I. L. R. 39 Mad. 195

REVISIONAL JURISDICTION OF HIGH COURT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 I. L. R. 40 Bom. 509

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 597

REVIVOR.

—Execution of decree—Decree barred by limitation
—Application for transmission—Notice—Order on the notice, effect of—Master, authority of—Court, Jurisdiction of—Civil Procedure Code (Act XIV of 1882), ss. 223, 224, 235, 248 and 249—Belchambers' Rules and Orders, r. 370—Limitation Acts (XV of 1877) Sch. II, Arts. 179 and 180; (IX of 1908) Sch. I, Arts. 182 and 183. On the 21st May 1896, the plaintiffs obtained a money decree in the High Court against the defendant. This decree was subsequently transmitted to the District Court of Purnea for execution, but was returned by that Court as unsatisfied. Thereafter, another application for execution by arrest and imprisonment of the defendant was made to

REVIVOR—con'd.

the High Court on its Original Side and the returnable date of the order on this application was fixed finally for the 12th July, 1901. No further steps were again taken until the 1st June, 1908, when the plaintiffs made another application to the High Court on the tabular form provided under s. 235 of the Code of Civil Procedure, 1882, for execution of their said decree by transmission of the same to the District Court of Murshidabad and attachment of the defendant's property situated within the jurisdiction of the latter Court, and the Registrar directed notice to issue on the defendant under s. 248 (a) of the Code. On the 30th June, 1908, the defendant not having appeared to show cause, the Master ordered execution to issue as prayed. Again no steps were taken until the 18th January, 1915, when a fresh application was made to the High Court for execution by attachment of No. 147, Cotton Street, in Calcutta. The defendant thereupon applied to set aside this attachment, but the High Court refused his application as barred. On appeal to the High Court in its Appellate Jurisdiction reference was made by this Court to a Full Bench. *Held*, that the application of the 1st June, 1908, and the order of the 30th June, 1908, did not constitute a revivor within Art. 183 of the 1st Schedule of the Limitation Act, 1908. *Per SANDERSON, C. J.* The substance and not the form of the matter must be looked at; and considered from that point of view the application was for the transmission of a certified copy of a decree together with a certificate of non-satisfaction and no more, and the order made in substance was that the application should be granted. The notice which was issued under s. 948 was inapplicable to the proceedings in question. The question would have to be determined by the Court whether a decree was capable of execution whether a decree was barred by the Court itself under s. 249 of the Civil Procedure Code. The Registrar was not clothed with authority to decide such a question as arises in this case, viz., whether the decree was barred by the Statute of Limitation. R. 370 in Belchambers' Rules and Orders was not consistent with the scheme of the Code of 1882. These rules must be read as modified by the Civil Procedure Code, 1882, under which the application in this case was made, and the notice issued and the order made did not operate as a revivor within the meaning of Article 183 of the Limitation Act, Schedule I. The fact that the word "revivor" is used in art. 183, instead of the different matters specified in Art. 182 being set out again or referred to in Art. 183 as might have been done, shows that something different to such matters was intended. Further, the conditions dealt with by the two clauses are essentially different and the periods of limitation vary materially. *Per WOODROFFE, J.* An order for transmission such is not an order on an application for execution, though it is an order on an application to further action by way of execution elsewhere on which action unless previously determined

REVIVOR—concl'd.

the question of the right to execute the decree as decided. If the Registrar had power to issue as a "quasi-judicial Act" notice under s 248, he had no power to determine judicially that the decree was alive had the debtor contested the

which is necessary for an order operating as revivor. The last two words of the Order ("Let execution issue as prayed") make the order operative as one for transmission of the decree, for this was what was asked. *Per MOOKERJEE J S 230* makes it plain that the application for execution must be presented to the Court to which the decree has been transmitted for execution, while the explanation to s 248 shows that the notice required by that section must, where the decree has been transmitted, be issued by the Court to which the decree has been sent for execution. Consequently, the issue of the notice in this case under s 248, on the basis of

and could not in law be, such a determination by the Master under s 249 as would operate to revive the decree. *CHATTERPUT SINGH v SALT SUMATI MULL (1916) I. L. R. 43 Calc. 903*

REVOCATION.

See **HINDU LAW—WILL**

I. L. R. 39 Mad. 107

RHANDERIAS.

See **MAROMEDAN LAW—ENDOWMENT**

I. L. R. 43 Calc. 1085

RIGHT OF REPLY.

— *Exhibiting documents*

not part of the record, on behalf of the accused during the cross examination of the prosecution witnesses—*Doctrine of surprise—Criminal Procedure Code*

the in and or for the prosecution has concluded. The prosecution has no right of reply when the counsel for the accused has, during the cross examination of a prosecution witness and before the close of the case for the Crown, put certain letters, which do not form part of the record, to such witness, and then tendered and had them admitted in evidence. The question whether the prosecution has been taken by surprise is not the correct test under s 292 of the Code. *EMPEROR v SHREE NATH MAHAPATRA (1916) I. L. R. 43 Calc. 426*

RIGHT OF SUIT.

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**, ss 47, 73 104

I. L. R. 39 Mad. 570

RIGHT OF SUIT—concl'd.

See **EXECUTION SALE**

I. L. R. 39 Mad. 803

See **LESSOR AND LESSEE**

I. L. R. 39 Mad. 1042

See **RIGHT TO SUE**

plaintiff's house was searched in connection with

of the amount. The defendant pleaded that a Civil Court had no jurisdiction to entertain the suit. The Assistant Judge decided the suit in plaintiff's favour. The District Judge, on appeal, dismissed the suit holding that as under s 524 the property was at the disposal of Government, Government had an absolute right to it, and that the special provisions relating to investigation of claims to property mentioned in s 523 made the decision of the Magistrate final and deprived the person aggrieved of any right of action. On appeal to the High Court—*Held*, reversing the decree, that the order of the Magistrate disposing of the property under s 524 of the Criminal Procedure Code was not final and that it did not deprive the plaintiff of his right to establish his claim in a Civil Court. *Queen Empress v Tribho van Manelchand, I L R 9 Bom 131*, followed. *Secretary of State for India in Council v Valhat sangji Meghrajji, I L R 19 Bom 668*, discussed. *WASAPPA v SECRETARY OF STATE FOR INDIA (1915) I. L. R. 40 Bom. 200*

2. — *Co owners—Suit in ejectment against trespasser—Suit by one co owner alone—Other co owners, not parties—Suit, if main*

action. A judgment should not be based solely on inspection to cases Procedure (Act XIV of 1859) s 301

RIGHT TO SUE.

accrual of—

See **LIMITATION** . *I. L. R. 43 I. A. 113*

RIGHT TO SUE—concl'd.

— survival of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 2, CL. (11); O. XXII, R. 1.
I. L. R. 39 Mad. 382

ROAD.

See MUNICIPALITY.

I. L. R. 43 Calc. 130

— making and maintenance of—

See TORT . I. L. R. 39 Mad. 351

RULES OF COURT.

— C. VII, r. 8—

See CRIMINAL PROCEDURE CODE, s. 369.
I. L. R. 38 All. 134

RYOTWARI LANDOWNER.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 189. I. L. R. 39 Mad. 239

RYOTWARI LANDS.

— acquisition of, by Government—

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 6, SUB-S. (6), 8.
I. L. R. 39 Mad. 944

RYOTWARI TENURE.

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 6, SUB-S. (6), 8.
I. L. R. 39 Mad. 944

S**SADALWAR AND MATHIRI KASUVU.**

See MADRAS ESTATES LAND ACT (I OF 1908), s. 13, CL. (3).
I. L. R. 39 Mad. 84

SALE.

See CONTRACT ACT (IX OF 1872), s. 74.
I. L. R. 38 All. 52

See RECEIVER . I. L. R. 43 Calc. 124

See SALE IN EXECUTION OF DECREE.

See SALE FOR ARREARS OF REVENUE.

See SALE OF GOODS.

See SPECIFIC RELIEF ACT (I OF 1877), s. 27. I. L. R. 38 All. 184

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 40 . I. L. R. 40 Bom. 498

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 55 (4) (b).
I. L. R. 38 All. 254

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 60, 67—93.
I. L. R. 39 Mad. 896

— application to set aside—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 90 . I. L. R. 38 All. 358

SALE—cont'd.

— free of incumbrance—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 20, 22.
I. L. R. 39 Mad. 479

— in execution of a decree—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 90 . I. L. R. 38 All. 358

— properties advertised for, by the Official Receiver as subject to mortgage—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 20 AND 22.
I. L. R. 39 Mad. 479

— setting aside of—

See DEPOSIT IN COURT.

I. L. R. 43 Calc. 100

1. ————— Execution of rent-decree—Encumbrances—Bengal Tenancy Act (VIII of 1885), ss. 159, 163 to 167—Decree for arrears of rent—Sale under the Bengal Tenancy Act, effect of—Purchase by landlord. Where a tenure is sold under the provisions of the Bengal Tenancy Act in execution of a decree for arrears of rent, and the procedure prescribed in the Act has been observed, the result therein described as follows, namely, the purchaser becomes entitled to annul all encumbrances other than registered and notified encumbrances; the consequence of the sale does not depend upon the amount of the bid offered by the successful purchaser; it is independent of the value of the bid. S. 165 of the Act was enacted solely for the benefit of the decree-holder; if the bid is not sufficient to satisfy his decree and costs, it entitles him to have the property sold with power to annul all encumbrances; but it is not obligatory upon him to adopt this extreme measure, and he is not in peril if he decides not to pursue this special remedy. *Banbihari Kapur v. Kheta Pal Singh Roy*, I. L. R. 38 Calc. 923, not followed. *SALIMULLAH v. RAHENGUDDI* (1915).

I. L. R. 43 Calc. 263

2. ————— Immoveable property—Transfer of Property Act (IV of 1882) s. 54—District Board, sale by—Incorporated Company—Suit, ————— Civil Procedure Code (Act V of 1908) O. XLI, rr. 22 (3), 33—Corporation, duty of, when it receives money under an illegal or ultra vires agreement. S. 54 of the Transfer of Property Act provides that a sale of tangible immoveable property of the value of Rs. 100 and upwards can be made only by a registered instrument. Title to land, therefore, cannot pass by a mere admission when the statute requires a deed. *Jadu Nath v. Rup Lal*, I. L. R. 33 Calc. 967, *Dharam Chand v. Manji Sahu*, 16 C. L. J. 436, *Narak Lal v. Mangoo Lal*, 22 C. L. J. 380, referred to. *Hemendra Nath Mukerjee v. Kumar Nath Roy*, I. L. R. 32 Calc. 169, distinguished. The effect of rules 93 and 98 of the Statutory Rules, made by the Lieutenant-Governor on the

SALE—contd

15th December 1885 under s 138 (d) of Beng Act III of 1885, is that no immovable property vested in a District Board can be sold, except with the previous approval of the Local Government and except by an instrument under the common seal signed by the Chairman and by two members of

whose duty it has been to construe, execute and apply it, although such interpretation has not by

the creature of Statute Law the prescriptions for its acts and contracts are imperative and essential to their validity *Hard v Beck*, 13 C B (N S) 668, *Stapleton v Haymen*, 2 H & C 913, *The Andalusian*, L R 3 P D 182, *Le Feuvre v Miller*, 8 E & B 321, *Cope v Thames Haven*, 3 Exch 441, *Diggle v London and Blackwell Ry*, 5 Exch 442, *Frend v Dennitt* 4 C B (N S) 676, *Cornwall Mining Co v Bennett*, 5 H & N 423, *Irish Peat Co v Phillips*, 1 B & S 598, *Bottomeley v Case*, 16 Ch D 681, and *In Re Gifford and Bury Town Council*, 20 Q B D 368, referred to. A suit need not be dismissed merely because the authority for its institutions such as a certificate under the Pensions Act, 1861, or s 78 of the Land Registration Act or s 60 of the Bengal Tenancy Act or s 4 of the Succession Certificate Act is not produced with the plaint. But this principle has no application to a case where the plaintiff at the date of the institution of the suit had no title at all *Sarat Chandra v Apurba Krishna*, 14 C L J 53, referred to. One contract is rescinded by another between the same parties, when the latter is inconsistent with and renders impossible the performance of the former, but, if, though they differ in terms, their legal effect is the same, the second is merely a ratification of the first and the two must be construed together where the new contract is consistent with the continuance of the former one, it has no effect unless and until it is performed *Hunt v South Eastern Railway Co*, 45 L J C P 87, *Dodd v Chaston*, [1897] 1 Q B 562, *Patmore v Colburn*, 1 Cr M & R 65, *Thornhill v Neate*, 8 C B (N S) 831, referred to. But where parties enter into a contract which if valid, would have the effect, by implication of rescinding a former contract and it turns out that the second transaction cannot operate as the parties intended it does not have the effect, by implication, of affecting their rights in respect to the former transaction *Noble v Ward*, 4 H & C 149, *L R*, 1 Exch 177, *Doe dem Biddulp v Poole*, 11 Q B 713, referred to. Where the question is, whether the one party is set free by the action of the other, the real matter for consideration is whether the acts or conduct of the one do or do not amount to an intimation of an

SALE—contd

intention to abandon and altogether to refuse performance of the contract. The true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract.

Benzon and Osting Co v

The Court

er as of the existence of the contract itself, and will not act upon less *Carolan v Brabazon*, 3 J & L 200 referred to. Where a corporation receives money or property under an agreement, which turns out to be ultra vires, or illegal, it is not entitled to retain the money. The obligation to do justice rests upon all persons, natural and artificial, if one obtains the money or property of others, without authority, the law, independently of express contract will compel restitution or compensation *Chapleo v Brunswick Building Society*, 6 Q B D 696, referred to. As an ordinary rule a respondent in an appeal is not entitled to urge cross objections except as against the appellant. But rule 22 (3) of O XLI of the Code of 1908 has materially altered the pre existing law by the substitution of the words 'party who may be affected by such objection' for the word 'appellant' contained in s 561 (3) of the Code of 1882. Further, rule 33 of O XLI has conferred wide discretionary powers on the Court of Appeal to alter the decree of the Court below as the case may require. *MATHURA MOHAN SAHA v RAM KUMAR SAHA* (1915)

1 L R 43 Calc. 790

3 ——— Contract of sale —Exception clause excusing delay due to late shipment—Failure of seller to deliver on due date—Tender on a subsequent date—Onus on party relying on exception—Shipment to be shown to be an avoidably delayed—Shipment" meaning of—Measure of damages Defendant contracted with plaintiff to deliver to him in Calcutta 50 tons of Rangoon rice in June 1909 and another 50 tons in July 1909. A clause in the contract provided that no objection was to be raised by the plaintiff in case of the delivery of the goods being delayed by reason of the non arrival in time of the steamer carrying the goods on account of the shallowness of water at Diamond Harbour damage to the steam engine, accidents of the sea and other causes not under human control as also owing to late shipment at Rangoon. The June consignment was not tendered by defendant until the 9th of July and the July consignment until the 3rd August. The market rates on both these days were the same as those on 30th June and 31st July respectively. The plaintiff refused the tenders on both days and sued for damages, being the difference between the contract price and the market price on the said two dates. Defendant relying on the clause relating to late shipment pleaded that under the contract there was no particular due date of delivery. Held, that the defendant could not rely on that clause unless he was able to prove that the circumstances which led to delay in shipment were not attributable

SALE—concl'd.

to his negligence. *Dunn v. Bicknell*, [1902] 2 K. B. 614, 621, followed. That the burden of establishing that his case was covered by the exception on which he relied was on the defendant. *Sandeman and Sons v. Tyzack and Branfoot Steamship Co., Ltd.*, [1913] A. C. 680, 689, followed. The term "shipment" in the contract included not merely the loading of goods on board the ship but also the starting of the ship. That as soon as the contract had been broken, the obligation of the purchaser to take delivery of the goods vanished and he was not bound to accept the goods when they were delivered and that the right measure of damages was the difference between the contract price and the market price on the dates of delivery originally agreed upon by the parties. *Grenon v. Lachmi Narain*, I. L. R. 21 Calc. 8, relied on. *KALI KANTA SHAHA v. ISMAIL* (1914).

20 C. W. N. 159

4. ——— Suit by purchaser under registered *kabala* against defendant in possession—Plaintiff, if has to prove passing of consideration—Recital in deed admitting receipt of consideration, value of—Second appeal—Onus. A plaintiff has to prove his title when a defendant in possession pleads he is only a *benamidar* but he shows a *prima facie* title by producing and proving a conveyance which usually contains a recital of the receipt of consideration. The onus in such a case is on the defendant to show non-payment of consideration. The fact that the defendant is in possession is an important element to be taken into consideration in determining whether the transaction is *benami*. But there is no presumption in favour of *benami* even where the defendant is in possession. Where the lower Appellate Court held that the plaintiff's purchase was *benami* being influenced by the erroneous view that the onus was on the plaintiff, though it relied also on the fact that the defendant was in possession, the finding was reversed in second appeal and the case was sent back for re-hearing. A recital in a deed of sale admitting the receipt of consideration is evidence, though not conclusive, against the vendor. *DURGA CHARAN CHANDER v. THE KHARDA Co., Ltd.* (1915) . . . 20 C. W. N. 254

SALE ABSOLUTE.

See INCUMBRANCE

I. L. R. 43 Calc. 558

SALE DEED.

See CONSTRUCTION OF DEED

I. L. R. 40 Bom. 74

See DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), ss. 3, CL. (y) AND 10A . . . I. L. R. 40 Bom. 397

See SUIT FOR CANCELLATION OF DOCUMENT . . . I. L. R. 38 All. 232

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . . . I. L. R. 40 Bom. 313

mistake in—

See EVIDENCE ACT (I OF 1872), s. 92, CL. (a) . . . I. L. R. 39 Mad. 792

SALE FOR ARREARS OF REVENUE.

See REVENUE SALE LAW.

1. ——— Purchaser of a share—Meaning of the words, "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners"—Revenue Sale Law (Act XI of 1859), s. 54. At a sale under s. 13 of Act XI of 1859 it is not the rights of the recorded proprietor that pass, but the share itself. The policy of the revenue law is to protect the revenue and make the share on which the revenue is assessed available for the arrears of revenue due upon it. *Debi Das Chowdhuri v. Bipro Charan Ghosal*, I. L. R. 22 Calc. 641, followed. *Banulata Dasi v. Monmotha Nath Goswami*, 11 C. W. N. 321, *Kumar Kalanand Singh v. Syed Sarafat Hussain*, 12 C. W. N. 528, *Rahimuddi Munshi v. Nalini Kanta Lahiri*, 13 C. W. N. 407, *Bilas Chandra Mukerjee v. Akshoy Kumar Das*, 16 C. W. N. 587, *Bhawani Koer v. Mathura Prasad*, 7 C. L. J. 1; *Anmoda Prosad Ghose v. Rajendra Kumar Ghose*, I. L. R. 29 Calc. 223, and *Gungadeen Misser v. Kheeroo Mundal*, 14 B. L. R. 170, referred to. *KHEMESH CHANDRA RAKSHIT v. ABDUL HAMID SIKDAR* (1915) . . . I. L. R. 43 Calc. 46

2. ——— Adverse possession—Limitation—Incumbrance—Limitation Act (IX of 1908), Sch. I, Arts. 121, 142, 144—Assam Land and Revenue Regulation (I of 1886), ss. 70, 71. In a suit for khas possession and mesne profits in respect of certain lands purchased by the plaintiffs at a sale for arrears of Government revenue, the defendants contended that they had been in adverse possession of the said lands for a long time, that their occupation was in the nature of an incumbrance and that the plaintiffs were not entitled to avoid the same:—Held, that the interest which the defendants acquired was an incumbrance within the meaning of Art. 121 and the suit was barred by limitation. *Karmi Khan v. Brojo Nath Das*, I. L. R. 22 Calc. 244, and *Nuffer Chandra Pal Chowdhury v. Rajendra Lal Goswami*, I. L. R. 25 Calc. 167, approved. *Kumar Kalanand Singh v. Syed Sarafat Hossein*, 12 C. W. N. 528, and *Rahimuddi Munshi v. Nalini Kanta Lahiri*, 13 C. W. N. 407, distinguished. *PRASANNA KUMAR DUTT v. JNANENDRA KUMAR DUTT* (1915).
I. L. R. 43 Calc. 779

SALE IN EXECUTION OF DECREE.

See BENGAL TENANCY ACT (VIII OF 1885), ss. 85, 159.

I. L. R. 43 Calc. 178

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.

I. L. R. 40 Bom. 557

1. ——— Sale certificate, purchaser at, suit for rent by, after registration, under Land Registration Act—Decree obtained therein, sale in execution of—Purchase by decree-holder—Certificate sale subsequently cancelled—Rent-decree and sale, if thereby reversed. A, having purchased property at a sale under the Public Demands

SALE OF EXECUTION OF DECREE—contd.

Recovery Act, on 7th September 1908, sold it to B, who duly obtained a sale certificate from the revenue authorities, was placed in possession and had his name registered under the Land Registration Act. B then sued the tenant on the property for rent and obtained an *ex parte* decree in execution whereof the tenure was sold and purchased by the decree holder himself on 20th November 1909. The sale under the Public Demands Recovery Act was cancelled on 29th March 1910 on the ground that no notice had been served under s. 109 of the Act and that the proceedings were invalid and inoperative in consequence. *Held*, that the rent decree and sale thereunder which were duly and regularly had at the instance of a stranger who had no concern with the irregularities in connection with the certificate sale were not affected by the reversal of the certificate sale. **NAGENDRA NATH BOSE v. PARBATI CHARAN (1914)**, 20 C. W. N. 819.

2. *Sale in execution, if holds good when ex parte decree set aside where property has been assigned by decree holder purchaser to stranger—Decree subsequently passed if validates sale—Court's power to take notice of facts which have occurred since institution of proceedings.* The assignee from the decree holder who has purchased property in execution of his own decree is in no better position than his assignor, and the sale is set aside when the decree is set aside even when the decree holder has sold the property to a stranger. **Satis Chandra v. Rameswari**, 20 C. W. N. 665, followed. As soon as an *ex parte* decree is set aside, the sale, where the decree holder is the purchaser, falls through and is not validated by a fresh decree subsequently made. **Set Umedmal v. Srinath Roy**, 1 L. R. 27 Cal. 810, s. c. 4 C. W. N. 692, **Harari Mull v. Janaki Prasad**, 6 C. L. J. 92, and **Ram Yead v. Bindeswar**, 6 C. L. J. 102, distinguished, the decree in those cases though temporarily set aside having been ultimately maintained. It is well settled that the Court may, in order to shorten litigation or to do complete justice between the parties, take notice of events which have happened since the institution of the proceedings and may afford relief to the parties on the basis of the altered conditions. **ABDUL RAHAMAN v. SARAFAT ALI (1915)**.

20 C. W. N. 667

3. *Sale in execution, when to be set aside when decree set aside—Decree holder purchaser—Purchase by stranger from latter before decree set aside—Equity.* The Court as a matter of policy has a tender regard for honest purchasers at sales held in execution of its decrees, though the decree may be subsequently set aside, where those purchasers were not parties to the suit and the decree had not been passed without jurisdiction. But the same measure of protection is not extended to purchasers who are themselves the decree holders nor can purchasers from such decree holders claim that the Court owes them any duty or to be within the policy which prompts the extension of protection to strangers, since

SALE OF EXECUTION OF DECREE—concl.

they have bought from one whose title is liable to be defeated. **Sheik Ismail Rowther v. Rajab Rowther**, 1 L. R. 30 Mad. 295, dissented from. **SATISH CHANDRA GHOSH v. RAMESSARI DASSI (1914)**, 20 C. W. N. 665.

4. *Execution, if void or voidable when decree fraudulent—Suit to set aside decree barred by limitation—Sale if may be vacated*

setting aside the decree, consequently where the right to have the decree set aside as fraudulent has become barred by limitation, no decree can be made setting aside the sale only as made in execution of a fraudulent decree. **Ram Narayan v. Shew Bhujang**, 1 L. R. 27 Cal. 197, distinguished. **RAJ KUMAR SARKEL v. RAJ KUMAR MALI (1915)**, 20 C. W. N. 659.

5. *Sale of putni, in execution of decree for arrears of rent—Purchaser, if liable for arrears previous to confirmation of sale.* The plaintiff purchased a putni taluq at a sale held in execution of a decree for arrears of rent due thereon. Some of the putnidars applied to set aside the sale and while the proceedings for setting aside the sale were pending the remainder brought the suit against the recorded putnidars for arrears of rent subsequent to the period covered by the decree in execution of which the sale was held at which the plaintiffs purchased the taluq. The plaintiffs were made parties to this suit which was decreed and in execution of the decree the putni was put up for sale and the plaintiffs whose purchase at the previous sale had been by that time finally confirmed deposited the decretal amount and saved the putni from sale. *Held*, that in the absence of anything to denote the contrary, a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears and the plaintiffs were not liable for the arrears of rent for the period to the date of confirmation of sale at which they purchased the putni. **MATHURA MOHAN SAHA v. NABIN CHANDRA DUTT (1916)**, 20 C. W. N. 749.

SALE OF GOODS.

See CONTRACT

1 L. R. 43 Cal. 77

See CONTRACT ACT (IX of 1872), s. 103

1 L. R. 40 Bom. 630

1. *Contract for forward monthly deliveries—Construction—Anticipatory breach—Measure of damages.* In a contract, dated June 4th, for the purchase of 300 tons of Java sugar, it was stipulated 'shipments to be made by steamers during July to December 1914'. The agreement to be construed as a separate contract in respect of each shipment. Without giving any delivery, on the 18th August the sellers repudiated the contract. In an action for breach of contract brought by the buyer on the 26th August claiming damages

SALE OF GOODS—*contd.*

in respect of the whole contract, for 300 tons :—*Held*, that on the true construction of the contract, the buyer had the right to demand delivery of the goods by separate shipments spread over the months from July to December, and the true measure of damages was the aggregate of the differences between the contract price and the market price at the appointed times of delivery in each month. *Roper v. Johnson*, L. R. 8 C. P. 167, *Wertheim v. Chicoutimi Pulp Co.*, [1911] A. C. 301, *Frost v. Knight*, L. R. 7 Ex. 111, and *Brown v. Muller*, L. R. 7 Ex. 319, referred to. *Per MOOKERJEE J.* In the circumstances of the case, the instalments must be deemed to have been intended to be distributed rateably over the period appointed for the delivery of the whole quantity of the goods. *Calamnius v. Dowlais Iron Co.*, 47 L. J. Q. B. 575, *Coddington v. Paleologo*, L. R. 2 Ex. 193, referred to. *Thornton v. Simpson*, 6 Taunt. 556, *Tarling v. O'Riordan*, 2 L. R. Ir. 82, *Colonial Insurance Co. of New Zealand v. Adelaide Marine Insurance Co.*, L. R. 12 A. C. 128, cited by MOOKERJEE, J. It being found that the principle applied by the Court of first instance in assessing damages was erroneous, but that on the application of the proper principle the damages to be allowed would be larger, on the defendant's appeal the Court declined to disturb the judgment or order a remand. *BILASIRAM THAKURDAS v. GUBBAY* (1915). I. L. R. 43 Calc. 305

2. ————— C. I. F. Contract—

Insurance of goods against war risk without buyer's instruction—Buyer not obliged to pay for such insurance—Payments against documents—Bill of lading must be tendered—Bill of lading, what is a—War—Government proclamations prohibiting trading with the enemy—Effect of proclamations on contract, goods shipped in enemy port—Performance of contract becomes illegal. On the 9th June 1914 the defendants purchased from the plaintiff, 5 tons round copper bottoms c. i. f. Mahomerah, July shipment, and agreed to pay for the said copper in Bombay on being tendered the Bills of lading and other documents in respect thereof. The copper was shipped on board the S. S. "Tangistan" on or about the 28th July 1914, and the plaintiff obtained relative bills of lading and insured the goods against ordinary marine risks. On the 5th August in consequence of war having broken out between Great Britain and Germany the plaintiff's agent in England, although not instructed to do so by the defendants, insured the copper against war risks and paid 10 per cent. premium. The documents arrived in Bombay on the 7th September whereupon the plaintiff tendered them to the defendants and demanded payment of the invoice price of the goods including the above-mentioned extra premium of 10 per cent. in respect of insurance against war risks. The defendants refused to pay the amount demanded on the ground that they were not liable to pay the aforesaid extra premium. *Held*, that in the absence of express instructions from the defendants to effect insurance against war risks, the defendants were

SALE OF GOODS—*concl'd.*

not liable to pay the extra premium. By another contract, dated 17th July 1914, the defendants purchased from the plaintiff 900 bags of sugar c. i. f. Mahomerah, July shipment and agreed to pay for the said sugar in Bombay on being tendered the Bills of lading and other documents in respect thereof. The plaintiff got the sugar shipped at Hamburg on the S.S. Nicomedia on the 28th July 1914 and obtained, as he alleged, relative Bills of lading in respect thereof and he insured the goods. Subsequently after the documents relating to the said sugar had arrived in Bombay the plaintiff presented them to the defendants and demanded payment but the defendants refused to accept the document or to pay the money on the grounds firstly, that by reason of the state of war which existed and the Government proclamations prohibiting trade with the enemy, performance of the contract would be impossible, and secondly, that the documents which the plaintiff presented as Bills of lading were not Bills of lading and were not therefore the proper documents to be tendered in accordance with the terms of a c. i. f. contract. *Held*, that in view of the Government proclamations the tender of the shipping documents was not a valid tender and that acceptance of and payment against the said documents would be a violation of the said proclamation. *Duncan, Fox & Co. v. Schrempft and Bonke*, [1915] 1 K. B. 365, followed. *Held*, also, that a Bill of lading as known to merchants is a receipt for goods actually delivered over and shipped on board the ship named therein and signed by the Captain or his representative, and that the documents tendered to the defendants as Bills of lading were not Bills of lading but mere receipts for warehousing or shipment. As such they were no evidence of any shipment and a purchaser under a c. i. f. contract, if tendered such a receipt, would be entitled to ask for a Bill of lading, for he is not obliged to pay upon proof merely that the goods had arrived at the port of departure. *NISSIM ISAAC BEKHOR v. HAJI SULTANALI SHASTARY AND Co.* (1915).

I. L. R. 40 Bom. 11

SALE OF LAND.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 55 (4).

I. L. R. 39 Mad. 997

SALE PROCLAMATION.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 20, 22.

I. L. R. 39 Mad. 479

SALE WITH OPTION OR RE-PURCHASE.

See CONSTRUCTION OF DOCUMENT.

I. L. R. 40 Bom. 378.

SANCTION FOR COMPOSITION.

———— in revision, incompetency of High Court to—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 439.

I. L. R. 39 Mad. 604

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE, s. 195

(1) (c) . . . I. L. R. 38 All 169

1. ————— Revisional „ juris-

I. L. R. 43 Calc. 597

2. ————— Information to the police reported false—No subsequent application to the Magistrate for judicial investigation—Order of

but not followed by complaint—"Complaint"—Power of Magistrate to direct prosecution himself in such case—"Judicial proceeding"—Criminal Procedure Code (Act V of 1898), ss 4 (h), 195 (1) (b), 478 No sanction is necessary under s. 195 (1) (b) of the Criminal Procedure Code to prosecute an informant under s. 211 of the Penal Code when a false charge has been made by him only to the police *Karim Balish v King Emperor*, 2 Cr L J 66, *Bhimaraja Venkateswarulu v Moosa Bapulu*, 13 Cr. L J 480, *Emperor v Sheikh Ahmad*, 13 Cr. L J 578, followed But sanction is requisite under the section when he has subsequently

the police, reported to be false, has not subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and prayed for a trial, he has not made a "complaint" within the meaning of s. 4 (h) of the Code not be made under Code of the Penal Court, but only *Dharmadas v King Emperor*, 10 C L J 564, followed The procedure of calling on the informant who is reported by

SANCTION FOR PROSECUTION—concl'd.

the police to have made a false charge before them, to prove his case and the examination of witnesses is not contemplated by the Code, and the proceeding is not a judicial one within s. 478 of the Code *Moulh Durzi v Naurang Lal*, 4 C. L. N. 351, followed *TAYEBULLA v EMPEROR* (1916) . . . I. L. R. 43 Calc. 1152

3. ————— Sanction to prose-

High Court equally divided in opinion—Senior

cedure Code (Act V of 1898), s. 195, to set aside a

to a superior Court under s. 195, cl. (6), Criminal Procedure Code *Muthusami Mudali v Venn Chetti*, 1 L R 30 Mad 382, followed, (u) When

that laid down in cl. 36 of the Letters Patent and not the one in s. 429 or 439 of the Criminal Procedure Code, accordingly the opinion of the senior Judge prevails. *Per Curiam*—The power conferred upon the High Court by s. 195 (6), Criminal Procedure Code, is not a part of the appellate and revisional jurisdiction of the High Court conferred by Chapters 31 and 32 of the Criminal Procedure Code, but it is a special power conferred by s. 195 (6) of the Code *Held*, by the Division Bench (*SCINDARA AYIAR and SPENCER, JJ.*), that an application to a superior Court under s. 195, cl. (6), Criminal Procedure Code,

minimal appeals *Per SPENCER, J.*, in the Division Bench—But delay in applying may be a ground for refusing to grant sanction *BAFU v BAFO* (1912) . . . I. L. R. 39 Mad. 750

SAPINDAS.

See HINDU LAW—STRIDHAN

I. L. R. 43 Calc. 944

— consent of remoter—

See HINDU LAW—ADOPTION

I. L. R. 39 Mad. 77

SARANJAM.

Succession to Saranjam—Title by inheritance—*Saranjam*, rr. 2 and 5 under Act XI of 1852—Surt by previous holder of

SARANJAM—concl'd.

Saranjam—Subsequent holder filing a suit for the same relief—*Res judicata*—Civil Procedure Code (Act V of 1908), s. 11—Adverse possession against the previous holder—Rights of successive holder barred by limitation—Establishment of right to levy assessment—Indian Limitation Act (IX of 1908), Sch. I, Art. 130. The plaintiff was a Saranjamdar of an ancestral and hereditary Saranjam village where the lands in suit were situate. The lands were in defendant's possession on tenure in consideration of rendering certain Shetsanadi services. The defendants having no longer rendered any service, the plaintiff prayed for possession of the lands or in the alternative for a declaration establishing his right to levy assessment. The defendants contended that the suit was barred by limitation and also by *res judicata* in consequence of a previous decision in a suit (No. 458 of 1888) between the plaintiff's brother and the predecessors-in-title of the defendants for substantially the same reliefs as claimed by the plaintiff. *Held*, that the previous decision operated as *res judicata* as against the present plaintiff because he was claiming under the previous holder and was litigating under the same title as the previous holder in 1888. *Held*, further, that, since the decision in suit of 1888, the defendants and their predecessors-in-title had been holding adversely without payment of assessment and therefore the claim for assessment was barred by limitation inasmuch as neither a special mode of devolution nor an incapacity of alienation would prevent limitation operating against an estate. *Raddhabai and Ramchandra Konher v. Anantrav Bhagvant Deshpande*, I. L. R. 9 Bom. 198, followed. *Per* HEATON, J.: The words "between parties under whom they or any of them claim litigating under the same title" in s. 11 of the Civil Procedure Code, 1908, are intended to cover, and do cover, a case where the later litigant occupies by succession the same position as the former litigant. The words of the section are not intended to make any distinction between different forms of succession. *MADHAVRAO HARIHARRAO v. ANUSYABAI* (1916) . . . I. L. R. 40 Bom. 606

SATISFACTION.

— of the decree—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2.

I. L. R. 40 Bom. 333

SCOPE OF AGENCY.

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 511

SEA CUSTOMS ACT (VIII OF 1878).

See CONTRACT ACT (IX OF 1872), s. 56.

I. L. R. 40 Bom. 301

SEAR CH.

— of house—

See CRIMINAL PROCEDURE CODE, s. 165.

I. L. R. 38 All. 14

SECOND APPEAL.

See REMAND. . I. L. R. 43 Calc. 104

1. ———— *Order of Settlement Officer settling rent, whether open to second appeal—Bengal Tenancy Act (VIII of 1885), ss. 105A (4), 106, 109A—Excess area. Per Curiam*: When in a proceeding under s. 105 of the Bengal Tenancy Act the Settlement Officer is asked to increase the rent under sub-s. (4) in accordance with the rules laid down in s. 52, and the claim is refused on appeal to the Special Judge, on the ground that the land of the tenant is not proved to be in excess of the area for which rent has been previously paid, a second appeal is not barred by s. 109A of that Act. *Rameswar Singh v. Bhooneswar Jha*, 4 C. L. J. 138, and *Grant v. Ram Rekha Bhagat*, 14 C. L. J. 110, considered. *Per* MOOKERJEE, J. If in any proceeding under s. 105 questions under s. 105A have been investigated and determined, the order of the Settlement Officer, though in form an order which settles a fair and equitable rent, does in substance embody a decision of questions within the scope of s. 105A, and consequently of s. 106. Such a decision is not one merely settling a rent within the meaning of s. 109A and is consequently liable to be challenged by way of second appeal to the High Court. *JNANADA SUNDARI CHOWDHURANI v. AMUDI SARKAR* (1916) . . . I. L. R. 43 Calc. 603

2. ———— *Finding of fact—Benami transaction—Suit by husband on mortgage in name of wife—Wife impleaded as defendant—Presumption. Held*, (i) that the question whether a person who sues on a mortgage, not being the mortgagee named in the document, is or is not the true owner of the mortgage is not a question of fact; and (ii) that where a person so suing impleaded the nominal mortgagee (who was his wife) as a defendant and no objection was taken by her, there was a reasonable inference that the plaintiff's statement that he was true owner of the mortgage sued on was as between himself and his wife, correct. *DUJAI v. SHIAM LAL* (1915).

I. L. R. 38 All. 122

SECOND PROBATE.

— duty on—

See PROBATE . I. L. R. 43 Calc. 625

SECONDARY EVIDENCE.

See EVIDENCE. I. L. R. 38 All. 494

SECRETARY OF STATE FOR INDIA.

See COSTS . I. L. R. 40 Bom. 588

— non-liability of, for acts done in exercise of Sovereign powers—

See TORT. . I. L. R. 39 Mad. 351

— suit by—

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), s. 42.

I. L. R. 40 Bom. 166

See PENALTY . I. L. R. 43 Calc. 230

SECRETARY OF STATE FOR INDIA—*concl'd*

Secretary of State in Council, suit against, in respect of illegal order of District Magistrate under Assam Labour and Emigration Act (VI of 1901), s 91, and also for alleged defamation in a Government Order—Damage, remoteness of—Liability of defendant under the Government of India Act (I of 1858)—No liability on the ground that the order was made in the course of employment, and that the acts were done by Government servants in the exercise of statutory powers—Alleged ratification by the Local Government—Government Order—Absolute privilege—Absence of malice. Suit by the plaintiff, who represented the Assam Labour Supply Association in Ganjam and other districts, against the Secretary of State for India in Council for damages in respect of two orders of the District Magistrate of Ganjam suspending and dismissing one T S, the Local Agent of the Association in Ganjam, and closing his

it was stated that the plaintiff's own conduct was not altogether above suspicion. *Held*, by the Court on appeal (affirming the judgment of WALLIS, J., on the Original Side) that (i) as the action of the Collector and District Magistrate who was found to have acted without any malice was not directed against the plaintiff, but only against others and as the injury to the plaintiff, if any, was not the direct consequence of the Collector's act but was only very remotely connected with it, the plaintiff had no cause of action, and (ii) the Governor in Council was not liable for the publication of the defamation and the same was done on a privileged occasion, *i.e.*, in the course of its official duties. *Held*, further, by SADASIVA

not done on Government's behalf, the Government could not ratify the same, nor can Government be liable even if it had ratified the same. *Held*, further, by BAKEWELL J. that so far as the plaintiff was concerned, as he was neither an employer nor his agent he was, according to the Act, carrying on an illegal business and his suit was liable to be dismissed also on this ground. **ROSS v THE SECRETARY OF STATE FOR INDIA (1915)** I. L. R. 39 Mad. 781

SECURITIES.

See PRESIDENCY BANKS ACT (XI OF 1876), ss 36, 37

I. L. R. 39 Mad. 101

SECURITIES—*concl'd*.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXXVII R 5

I. L. R. 39 Mad 903

— demand of, by Magistrate—

See PRESS ACT (I OF 1910), ss 3 (1), 4 (1), 17, 19, 20 AND 22

I. L. R. 39 Mad. 1085

— forfeiture of—

See PRESS ACT (I OF 1910), ss 3 (1) & (1), 17, 19, 20 AND 22

I. L. R. 39 Mad. 1085

— mode of enforcement of—

See CIVIL PROCEDURE CODE (1908), s. 145, O XXXIV, R 14

I. L. R. 38 All. 327

— scope of—

See MORTGAGE I. L. R. 43 Calc. 895

SECURITY FOR COSTS.

See INSOLVENCY I. L. R. 43 Calc. 243

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE s 110.

I. L. R. 38 All. 393

1. — Dissemination of matter likely to promote enmity or hatred between classes—Necessity of intention—Criminal Procedure Code (Act V of 1898), s 108 (b)—Penal Code (Act XLV of 1860), s 153 A To justify an order under s 108 (b) of the Criminal Procedure Code, it is sufficient that the words used are likely to promote feelings of enmity or hatred between different classes, and it is not necessary to establish an intention to promote such feelings as it would be on a trial for the offence under s 153A of the Penal Code. *Dharmaloka v Emperor, 12 Cr L J 248*, dissented from *Joy Chander Sarkar v Emperor, 1 L R 38 Calc 214, Jaswant Rao v Amthavale, 5 Cr L J 439 10 Punj Rec 23*, referred to *SITAL PRASAD v EMPEROR (1915)* I. L. R. 43 Calc. 591

2. — Person with in the local limits of the Magistrate's jurisdiction—Residence—Commission of acts complained of within such local limits—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898) s 110. S 110 of the Criminal Procedure Code does not require residence within the local limits of the jurisdiction of the Magistrate who institutes proceedings thereunder. Where the habits of the persons called upon to furnish security for good behaviour were practised, and their evil reputa-

might be occasionally residing elsewhere—*Held*, that the Magistrate was competent to take proceedings against such parties under s 110 of the Code. *Kadabai v Queen Empress, 1 L R 27 Calc 993*, distinguished. *EMPEROR v DUTTA HALWAI (1915)* I. L. R. 43 Calc. 153

SECURITY FOR GOOD BEHAVIOUR—conclld.

3. ————— Previous convictions, proof of—Central Bureau register of thumb impressions, evidentiary value of—Extract from jail register without proof of identity—*Locus pœnitentiæ*—Criminal Procedure Code (Act V of 1898), s. 110. Whenever proof of previous convictions is required, whether under s. 75 of the Penal Code or Chapter VIII of the Criminal Procedure Code, such previous convictions must be proved strictly and in accordance with law, and unless so proved no Court can take them into consideration. A register produced from the Central Bureau purporting to contain the thumb impression of the accused that his descriptive roll with a list of his previous convictions, when there was no evidence how it came to be made and lodged in the Central Bureau nor from what particulars the previous convictions were recorded and certified, was held insufficient proof of such convictions. An extract from the jail register showing previous convictions of a certain person with aliases and certified copies of previous convictions of the same in the absence of evidence of identity with the present accused, held insufficient to prove previous convictions of the latter. A person who has served the period of his imprisonment should be given a chance of reformation and should not be proceeded with under s. 110 of the Criminal Procedure Code soon after his emergence from jail. *Junab Ali v. Emperor*, I. L. R. 31 Calc. 783, referred to. Although general statement of witnesses, e.g., that the accused are all pick-pockets and that every one is afraid of them, may not be wholly inadmissible in evidence, no Court should act on a body of such evidence without testing the statements of the witnesses and obtaining from them some particulars of the facts in which their general statements are made. The case of each accused should be differentiated in the evidence and the order of the Court. *EMPEROR v. SHEIKH ABDUL* (1916).

I. L. R. 43 Calc. 1128

SECURITY TO KEEP THE PEACE

See LETTERS PATENT (24 & 25 VICT., C. 104), CL. 15.

I. L. R. 39 Mad. 539

1. ————— Conviction under s. 143 of the Penal Code—Absence of finding of acts involving breach of the peace or evident intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1898), s. 106. To bring a case within the terms of s. 106 of the Criminal Procedure Code, the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same, or at all events the evidence must be so clear that, without an express finding, a superior Court is satisfied that such was the case. *Jib Lal Gir v. Jogmohan Gir*, I. L. R. 26 Calc. 576, followed. A finding that the common object of the unlawful assembly was by means of criminal force or show thereof to take possession of land cultivated by

SECURITY TO KEEP THE PEACE—conclld.

tenant of the rival landlord, and that, but for the direction of the latter to the tenants to retire, which was carried out, there might have been a serious riot, held insufficient to bring the case within the purview of s. 106 of the Code. *ABDUL ALI CHOWDHURY v. EMPEROR* (1915).

I. L. R. 43 Calc. 671

2. ————— Criminal Procedure Code, s. 107—Nature and quantum of evidence necessary before passing order for security. There must be definite evidence in the case of any and every person charged under s. 107 of the Code of Criminal Procedure, that there is danger of a breach of the peace by him. It is clearly in sufficient against a collective body of persons to suggest that there are indulging in feelings of hostility towards another body of persons. *Queen-Empress v. Abdul Kader*, I. L. R. 9 All. 452, referred to. *EMPEROR v. SHAMBHU NATH* (1916).

I. L. R. 38 All. 468

SELF-ACQUISITION.

See ALIYASANTANA LAW.

I. L. R. 39 Mad. 12

SEPARATION.

————— allegation of—

See HINDU LAW—JOINT FAMILY.

I. L. R. 43 Calc. 1031

SERVANTS QUARTERS.

————— acquisition of—

See LAND ACQUISITION.

I. L. R. 43 Calc. 665

SERVICE INAM.

See MADRAS PROPRIETARY ESTATES VIL-LAGE SERVICE ACT (II OF 1894), SS. 5, 10, CL. (2) . I. L. R. 39 Mad. 930

SERVICE OF NOTICE.

————— effect of omission of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 439, 422, 423.

I. L. R. 39 Mad. 505

SET-OFF.

See ATTORNEY'S LIEN FOR COSTS.

I. L. R. 43 Calc. 932

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 18 . I. L. R. 38 All. 669

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 19.

I. L. R. 40 Bom. 60

SETTLEMENT BY A HINDU WOMAN ON TRUSTS.

————— The Indian Trusts Act (II of 1882), s. 83—Trusts failing after settlor's death—Resulting trust in favour of settlor's heirs at the time of her death—The Indian Succession Act (X of 1865), s. 191, effect of—The Probate and Administration Act (V of 1881), s. 4, effect of—Where by a deed of settlement a Hindu woman

SETTLEMENT BY A HINDU WOMAN ON TRUSTS—*concl'd.*

... dies intestate and no administration is granted to his estate, the term 'legal representative' in s 83 of the Trusts Act must include the person or persons beneficially entitled who represent the interests of the deceased by virtue of inheritance. The representative by inheritance is to be found according to law at the moment of the death of the deceased, the maxim being "*Solus deus here dem facere potest, non homo*" DWARKADAS DAMO DAR v. DWARKADAS SHAMJI (1915)

I. L. R. 40 Bom. 341

SETTLEMENT OFFICER.

order of—

See SECOND APPEAL

I. I. R. 43 Calc. 603

power of—

See BENGAL TENANCY ACT (VIII of 1885), s 102 . I. L. R. 43 Calc. 547

SHARES.

sale of—

See DAMAGES . I. L. R. 43 Calc. 493

SHIPPING ORDERS.

See CONTRACT ACT (IX of 1872), ss 56, 65 . I. L. R. 40 Bom. 529

SIMANADARS.Land Act
cable—Ben
High Court

Bengal District Gazetter as a book of reference. The Chaukidari Chakran Land Act applies to *simanadars* as the Gazetter for Bankura shows that in thana Indas (where the lands in suit are situate), the *simanadars* perform those duties which are described in s 1 of the Act LALU DOME v. BEJOY CHAND MAHATAP (1915)

I. L. R. 43 Calc. 227

SIMPLE MORTGAGE.

See ADVERSE POSSESSION

I. L. R. 39 Mad. 811

SINGLE JUDGE.

judgment of—

See LETTERS PATENT APPEAL

I. L. R. 43 Calc. 90

SIR LANDS.

See AGRA TENANCY ACT (II of 1901), s 164 . I. L. R. 38 All. 223

SOLICITOR'S LIEN FOR COSTS.

See COSTS . I. L. R. 43 Calc. 676

SOVEREIGN RIGHT.

See ASSESSMENT I. L. R. 43 Calc. 973

SPECIAL CONSTABLES.

Dispute regarding ferry—Proceeding for security to keep the peace drawn up against one party—Appointment of members thereof as special constables—Refusal to act as such—Legality of appointment and of prosecution for such refusal—Police Act (V of 1861) ss 17, 19 The only legitimate object of appointing special constables, under s. 17 of the Police Act (V of 1861), is to strengthen the ordinary police force by the addition of suitable persons. When the appointments are not made with such an object, a prosecution under s. 19 of the Act for refusal to act as such will not be permitted. When the members of one party to a ferry dispute were appointed as special constables, and the circumstances showed that it was never really intended to utilize them as police officers, the High Court quashed the order of the District Magistrate directing their prosecution under s. 19 of the Act and the issue of warrants against them PARDIP SINGH v. EMPEROR (1915)

I. L. R. 43 Calc. 277

SPECIAL TRIBUNAL.

See RECORDS, POWER TO CALL FOR

I. L. R. 43 Calc. 239

SPECIFIC MOVEABLE PROPERTY.

Specific Relief Act

to enforce the decree so obtained by the stringent methods provided in O XXII, r 31 of the Code of Civil Procedure, it is necessary that he should allege and prove facts which entitle him to compel the delivery of specific moveable under the provisions of s 11 of the Specific Relief Act. Where in a suit against a carrier, the plaintiff asked for the recovery of one plank of wood that was not deli-

by Art. 31 and not by Art. 49 or 115 of the Limitation Act. By the amendment in 1899 of Art.

SPECIFIC MOVEABLE PROPERTY—*concl.*

31 of the Limitation Act the Legislature clearly indicated its intention that the *Article* should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort. Art. 49 is inapplicable to such a case; even if it were applicable, its operation would be excluded by the special Art. 31 as amended on the principle *generalia specialibus non derogant*. *The British India Steam Navigation Co. v. Hajee Mahomed Esach & Co.*, I. L. R. 3 Mad. 107, *Danmull v. British India Steam Navigation Co.*, I. L. R. 12 Cal. 477 and *Great Indian Peninsula Railway Co. v. Raitett Chandmull*, I. L. R. 19 Bom. 165, referred to. *VENKATASUBBA RAO v. THE ASIATIC STEAM NAVIGATION CO., CALCUTTA* (1915).

I. L. R. 39 Mad. 1

SPECIFIC PERFORMANCE.

See GUARDIAN AND MINOR.

I. L. R. 38 All. 430

----- suit for-----

See EXPECTANCIES.

I. L. R. 39 Mad. 554

See SPECIFIC RELIEF ACT (I OF 1877)

s. 27 . . . I. L. R. 38 All. 184

----- suit for, to sell-----

See COURT FEES ACT (VII OF 1870), s. 7,
CLS. (v) AND (x) . I. L. R. 38 All. 292

1. ----- Agreement to sell decree and rights appertaining thereto and to transfer it to defendant—Vendor and Purchaser—Decree becoming barred by limitation before assignment—Obligation to keep decree on vendor—Civil Procedure Code (Act XIV of 1882), s. 232—Transfer of decree. The plaintiffs (respondents) brought a suit for specific performance of an agreement made between them and the defendant (appellant) by which the latter contracted to purchase a mortgage decree and all rights appertaining thereto, which decree was to be duly transferred to the defendant, which by reason of s. 232 of the Civil Procedure Code, 1882, could only be done by an assignment in writing. The decree, however, before assignment became barred by limitation, and he refused to take it. *Held* (reversing the decision of the Appellate High Court), that what the plaintiffs had agreed to assign to the defendant was a decree capable of execution; that until assignment there was an obligation on the plaintiffs as vendors to keep the decree alive; and that therefore when the decree became barred by limitation the plaintiffs were asking for specific performance by the defendant of an agreement which they were themselves unable to perform, and no such relief could be granted. *Wolverhampton and Walsall Railway Co. v. L. & N.-W. Railway Co.*, I. L. R. 16 Eq. 433, per Lord Selborne, referred to. *JATINDRA NATH BASU v. PEYER DEYE DEBI* (1916) . . . I. L. R. 43 Cal. 990

2. ----- Contract to lend or borrow money—Suit for balance of mortgage money

SPECIFIC PERFORMANCE—*contd.*

—Damages—Provincial Small Causes Courts Act (IX of 1887), Sch. II, cls. 15, 16—Civil Procedure Code (Act V of 1908), s. 113, O. XLI, r. 1. A suit for specific performance of a contract to lend or borrow money is not maintainable. *Rogers v Challis*, 27 Beav. 175, *Sichel v. Mosenthal*, 30 Beav. 371, *Larios v. Gurely*, L. R. 5 P. C. 346, and *The South African Territories v. Wallington*, [1898] A. C. 309, followed. Nor would a suit to recover the balance of the mortgage money, or a suit for the rectification of the instrument be cognizable by a Court of Small Causes. (*Vide* cls. 15 and 16 Sch. II, Provincial Small Cause Courts Act, 1887). But a suit for damages for breach of contract is cognisable by a Court of Small Causes, if the amount is within its pecuniary jurisdiction. *SHEIKH GALIM v. SADARJAN BIBI* (1915)

I. L. R. 43 Cal. 59

3. ----- Specific performance of a contract of sale—S. 27 (6), Specific Relief Act (I of 1877)—Contract varied—Vendors asked to take out letters of administration and leave to sell—Effect of variation—Contingent contract—Order for sale—Title of purchasers under order of Court—Whether such purchasers are affected with notice of previous agreement—Dealings with purdanashin ladies—Independent legal advice—Costs—Discretion of the Appeal Court in modifying order for costs made by the Court of first instance. Two widows, defendants Nos. 1 and 2 entered into an agreement on the 23rd January 1910 for sale of certain properties for legal necessity with the plaintiffs at Rs. 8,000 for cottah. The agreement contained the following covenant on the part of the vendors—“We shall at our own expenses do everything which your attorney shall consider necessary for rectifying and clearing the title-deeds.” The idea of applying for Letters of Administration was not present in the mind of any of the parties at the time of the agreement. Subsequently in order to obviate any objection of the reversioner on the score of legal necessity the plaintiffs asked the widows to apply for Letters of Administration with leave to sell to the plaintiffs. The widows obtained Letters of Administration and one of them actually obtained leave to sell to the plaintiffs. Subsequently the widows applied and obtained leave for sale to the defendants Nos. 3, 4 and 5 (described as the Nandi defendants) who offered a higher price and the property was conveyed to them. The Nandi defendants had notice of the agreement for sale to the plaintiffs at the time when they took the conveyance. In a suit by the plaintiffs for specific performance of the agreement of sale against all the defendants and in the alternative for damages against defendants Nos. 1 and 2 for breach of contract. *Held*, that the contract as varied by mutual consent became a contingent one, and as the contingency had not happened (i.e., leave of the Court had not been obtained in their favour) the plaintiffs were not entitled to claim performance of the contract. *Narain Pattro v. Aukhoy Narain Manna*, I. L. R. 12 Cal. 152, and *Sarbesh Chandra v. Kheltra Pal*,

SPECIFIC PERFORMANCE—contd.

14 C. W. N. 451 s c 11 C L J. 346, followed *Held*, also, that the plaintiffs were not entitled to claim damage as their action was based on the original contract and not on the contract as modified and as there was no breach of the modified contract *KALIDAS DASSEE v NORO KUMARI DASSEE* (1916) . . . 20 C. W. N. 929

4. ————— *Contract—Specific performance of contract—Agreement to reduce terms into writing—Contract, if complete before writing—Contract completed subject to insertion of "usual terms and conditions," if specifically enforceable—Vendor, if may waive such terms and enforce others—Earnest money, payment of, if conclusively of completed contract—Uncertainty—Variance between pleading and proof* In a suit for specific performance of a contract for sale and purchase of immovable property where the purchaser agreed to buy the property at a certain price and agreed to certain terms and conditions as he understood them and paid earnest money and the terms of the contract were sought to be proved partly by evidence in writing and partly by oral evidence and it appeared that the parties contemplated a formal written agreement to be approved and afterwards executed embodying the special terms and conditions already supposed to have been agreed upon and the "usual terms and conditions" of sale and purchase and it appeared that there were a number of terms and conditions admittedly not agreed to or discussed between the parties which were afterwards embodied in a draft agreement prepared by the vendor's solicitor and submitted for the approval of the purchaser and which draft agreement the purchaser did not approve *Held*, that there was no completed contract between the parties

terms should be embodied in a written agreement there was, in the absence of such a formal contract in writing, no concluded contract between the parties That where the terms of a contract are sought to be proved by oral evidence the provision for a prospective written agreement cannot be treated as negligible the more so where the supersession is of an oral by a written agreement and not merely of one writing by another That even in the case of a supersession of a written document by a more formal writing the circumstance that the parties do intend to make a subsequent agreement has been held to be strong evidence that they did not intend the previous negotiation to amount to an agreement That even if the main terms be substantially agreed upon and to that extent the purchaser may have considered that there was a contract and have used language appropriate to that position nevertheless where it appears that the prospective written agreement contemplated embodying the term agreed upon or supposed to have been agreed upon together with other terms and conditions

SPECIFIC PERFORMANCE—contd

described as "usual terms and conditions" the contract cannot be specifically enforced for uncertainty That the mere payment of earnest money did not preclude the purchaser from pleading that there was no concluded contract *Per WOODROFFE, J.*—The Court will not enforce specific performance of a contract the terms of which are uncertain The question whether a contract is uncertain is a question of fact which arises on the documents and oral evidence tendered in support of it. An Appeal Court is not bound to accept the first Court's appreciation of the facts of the case Both the facts and law are open to the Court of Appeal. But appellant should satisfy the Appeal Court that the judgment appealed against is erroneous The mere reference to a formal agreement will not prevent a binding bargain The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put into more formal shape does not prevent the existence of a binding contract The payment of earnest-money is itself evidence of a concluded contract *Per MOOKERJEE, J.*—It is well settled that the fact that the parties intended to embody the terms of the contract in a formal written agreement is strong evidence that the negotiations prior to the drawing of such writing are merely preliminary and not intended or understood to be binding If it is definitely expressed and understood that there is to be no contract until the formal writing is executed there is plainly no binding agreement formed until this provision is complied with It is also true that if all terms of the agreement have not been settled and it is understood that these unsettled terms are to be determined by the formal contract, there is no binding obligation until the writing is executed But if the oral agreement or written memorandum is complete in itself and embodies all the terms to be inserted in the intended formal writing a binding obligation is fixed on the parties unless it is understood and intended that such contract shall not become operative until reduced to writing The question is merely one of intention. If the written draft is viewed by the parties merely as a convenient memorial of record of their previous contract, its absence does not affect the binding force of the contract, if, however, it is viewed as the consummation of the negotiations, there is no contract until the written draft is finally signed. To determine which view is entertained in any particular case several circumstances may be helpful, as for example whether the contract is of that class which are usually found to be in writing, whether it is of such a nature as to need a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or usual contract, whether the negotiation itself indicates that a written draft is contemplated as a final conclusion of the negotiation. If a written draft is proposed, suggested or referred to during the negotiations it is some evidence that the parties intended it to be the final closing of the contract The Court

SPECIFIC PERFORMANCE—concl'd.

should refuse specific performance where there is substantial variance between the pleading and proof. The draft agreement containing terms which were never settled before between the parties, the legitimate inference to be drawn is that the parties intended the written draft to be the consummation of their negotiations which were to be treated as concluded only upon the final execution of the written agreement. Where many terms still remained undetermined it is a sure index that the contract has not yet been concluded. Where there is ambiguity in any of the conditions of sale in restriction of the rights of the purchaser the condition should be construed more strictly against the vendor. *HYAM v. M. E. GUBBAY* (1915) 20 C. W. N. 66

SPECIFIC RELIEF ACT (I OF 1877).

See NUISANCE . I. L. R. 40 Bom. 401

— s. 3—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 40 I. L. R. 40 Bom 498

— s. 11—

See SPECIFIC MOVEABLE PROPERTY.

I. L. R. 39 Mad. 1

— s. 12—

Suit for delivery of cattle—Specific performance of the contract or compensation—Alternative reliefs—Non-maintainability of the suit—Art. 15, second schedule, Provincial Small Cause Courts Act (IX of 1887)—Substantial justice—S. 25, Provincial Small Cause Courts Act. The mortgagors entered into a contract with their mortgagees whereby, in consideration of the latter making an endorsement on the back of the mortgage-bond crediting Rs. 215 to the mortgagor's account, the mortgagor agreed to deliver to the mortgagees certain heads of cattle. The mortgagees performed their part of the contract and then sued the mortgagors in the Small Cause Court for delivery of the cattle promised, and in the alternative for damages. The Court having dismissed the suit as being a suit for specific performance of a contract and thus beyond its competence as a Small Cause Court: *Held*, that under s. 12 of the Specific Relief Act no suit for specific performance would lie as, unless there was something remarkable about the cattle, it was obvious that adequate compensation for the breach of the contract could be given in money. Substantial justice was done by the High Court in the exercise of the powers under s. 25, Provincial Small Cause Courts Act, by directing that the plaint be amended by striking out the clause demanding specific performance and the suit dealt with solely as a suit for damages occasioned by a breach of the contract. *BHARAT MAHTO v. NISARALI SHEIKH* (1916) . 20 C. W. N. 1020

— s. 27—*Sale—Suit for specific performance of a contract to sell, defendants being vendees under a registered sale-deed—Priority—Registration Act (XVI of 1908), s. 50.* The owners of a

SPECIFIC RELIEF ACT (I OF 1877)—concl'd.

— s. 27—concl'd.

village which had already been sold at an auction sale in execution of a decree agreed to sell it to the plaintiff, provided that the auction sale should be set aside. The auction sale was set aside; but subsequently the village was sold by means of a registered sale-deed to a third party. *Held*, on a suit by the plaintiff for specific performance of the contract to sell to him, that the defendants' vendees' registered sale-deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff to the effect that the defendants at the time of their purchase were aware of the existence of the contract in favour of the plaintiff. *NAUBAT RAI v. DHAUNKAL SINGH* (1916) I. L. R. 38 All. 184

— s. 27 (b)—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . I. L. R. 39 Mad. 462

— s. 39—*Conveyance executed by accused in consideration of complainant withdrawing prosecution for non-compoundable offence—Suit to set aside such sale-deed, if lies—Parties in pari delicto, if entitled to declaratory relief—Court's discretion under s. 39.* The rule of law in England with regard to illegal contracts is that a Court of Law will not aid persons in enforcing the performance of an illegal contract or assist them to recover back property which they have given away under such an illegal contract when the persons and parties to the contract are themselves *pari delicto* in procuring this illegality. The Courts of equity in England have always refused to afford equitable relief in enforcing a contract void in law or restoring property which is based on an illegal contract where the illegality is apparent on the face of the document itself. The principle on which Courts of law and equity have refused to restore property given away under an illegal agreement, is equally applicable when the relief prayed for is by way of a declaration, after the party seeking such relief has secured to himself the benefit of the agreement. S. 39 of the Specific Relief Act in allowing relief to be granted in a proper and fit case, even when a contract out of which the right springs is void, leaves it entirely in the discretion of the Court to exercise the jurisdiction so conferred upon it. Where *L*, *B*'s agent, having purchased property, *B* alleged that it was purchased by *L* as *B*'s trustee whilst *L* claimed to have purchased it in his own right, and the dispute culminated in civil actions brought by the parties against each other, and in *B* instituting criminal proceedings against *L* under ss. 408, 477 of the Indian Penal Code, but at the instance of arbitrators appointed by mutual consent, the disputes were settled and *B* withdrew the criminal and other proceedings against *L* and in consideration thereof *L*, *inter alia*, executed a sale-deed of the property purchased by him: *Held*, in a suit by *L* to have the conveyance declared void and the sale set aside and cancelled, that the

SPECIFIC RELIEF ACT (I OF 1877)—concl'd.**s. 39—concl'd.**

whole of the contract was illegal, as it was not possible to sever the legal from the illegal part. That there being no evidence that there was any undue influence, fraud or duress or that the plaintiff took a more innocent part in the illegal compromise than the defendant, the Court would not grant relief under s 39 of the Specific Relief Act. *BYNDESHARI PRASAD v LEKHRAJ SAHU* (1916) 20 C. W. N. 769

s. 42—

See DECLARATORY DECREE, SUIT FOR
I. L. R. 43 Calc. 694

See MADRAS VILLAGE COURTS ACT (MAD
I OF 1889) s 24.

I. L. R. 39 Mad 802

See MUNICIPAL LAW

L. R. 43 I. A. 243

Declaration, suit for
—Legal character or right to property, meaning of—
Rights under a contract, declaration as to, if maintainable—S 42, not exhaustive—Ordinary rule—
Exception—Kuri, subscriber to—Assignee from subscriber—Right of, if continue payment—Suit for declaration, by, if maintainable S 42, of the Specific Relief Act does not contemplate a suit for a declaration that a valid personal contract subsists between the plaintiff and the defendant, as it is not a suit for a declaration of title to a legal character or a right to property. S 42 of

relief will not be given in respect of rights arising out of a contract which would affect only the pecuniary relationship between the parties to the contract, unless there are exceptional circumstances in a case to take it out of the ordinary rule. Where the plaintiff, who was the purchaser of the rights of the second defendant who was a subscriber to a half ticket in a kuri started by the first defendant as its proprietor, sued the latter for a declaration that he was not a defaulter and was entitled to continue to pay the subscriptions to the kuri. *Held*, that the suit for declaration was not maintainable. *RAMAKRISHNA v NARAYANA* (1914) . . . I. L. R. 39 Mad. 80

SPIRITUAL WELFARE.

See HINDU LAW—ALIENATION

I. L. R. 43 Calc. 574

STABLES.

See NUISANCE . I. L. R. 40 Bom. 401

STAMP.

See BUNDELKHAND ALIENATION OF LAND
ACT (II OF 1903), s 17

I. L. R. 38 All. 351

STAMP—concl'd

See CIVIL PROCEDURE CODE (ACT V OF
1908), s 92 . I. L. R. 40 Bom. 541

See EVIDENCE . I. L. R. 38 All. 494

See STAMP ACT (II OF 1899), SCH I, ART
55 . I. L. R. 38 All. 56

STAMP ACT (II OF 1899).**s. 3—**

See BUNDELKHAND ALIENATION OF LAND
ACT (II OF 1903), s 17

I. L. R. 38 All. 351

Sch. I, Art. 5 (c)—Agreement to hire
with option of purchase, stamp duty on An in-

on execution of the deed and another fixed amount by equal monthly instalment with interest and that on payment of the full sum with interest the machine would become the property of the huer but that until such payment was made the machinery would continue to be on hire. *Held* (on a reference by the Board of Revenue under s 67 of the Stamp Act), that the document in question was an agreement within the meaning of Art 5, cl (c) of Sch I to the Indian Stamp Act and was therefore liable to a stamp duty of eight annas. *In the matter of LINOTYPE AND MACHINERY, Ltd* (1916) . . . 20 C. W. N. 1252

Sch. I, Art. 35—Amaldustak, whether it requires stamp—Conviction under s 62 (b), if maintainable—Schedule of Stamp Act if exhaustive. The schedule attached to the Stamp Act must be treated as exhaustive. An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the schedule and does not require a stamp. *Held*, on a construction of amaldustak which was for a term of seven years but wherein no rent was fixed, that the document did not require stamp and so the conviction of executant of the document under s 62 (b) of the Stamp Act was set aside. *SUNDER KVER v KING EMPEROR* (1916)

20 C. W. N. 923

Sch. I, Art. 55—Stamp—Release Partition deed. Two persons, each of whom claimed the sole right to the property of a deceased relation, arrived at a compromise of their respective claims and gave effect thereto by means of two deeds of even date, by which deeds each relinquished in favour of the other his (or her) claim to a portion of the estate of the deceased. *Held*, that these deeds were releases, assessable to stamp duty under Art 55 of the first schedule to the Indian Stamp Act, 1899. *Elnath S Gowde v Jagannath S Gowde*, I L R 9 Bom 417, and *Reference under Stamp Act, s 46*, I L R 18 Mad 233, referred to. *Reference under Stamp Act, s 46*, I L R 12 Mad 198, distinguished. *JIBAN KUNWAR v GOBIND DAS* (1915)

I. L. R. 38 All. 56

STAMP DUTY.

— on a pauper plaint—

See CIVIL PROCEDURE CODE (1908), O. XXXIII, RR. 10, 11.

I. L. R. 38 All. 469

STANI, KARNAVAN.

See MALABAR TARWAD.

I. L. R. 39 Mad. 918

STATEMENT.

— from a complainant, not a confession—

See CRIMINAL PROCEDURE CODE (Act V of 1898), s. 164.

I. L. R. 39 Mad. 977

STATUTE.

— *Not declaratory but amending—No retrospective operation.* Statutes which are properly of a declaratory character have a retrospective effect. But the nature of the statute must be determined from its provisions, and the mere fact that the expression "it is declared" has been used, is by no means conclusive as to the true character of the legislation. *JOTIRAM KHAN v. JONAKI NATH GHOSE* (1914)

20 C. W. N. 258

STAY OF CRIMINAL PROCEEDINGS.

— *Stay of criminal proceedings pending appeal in matter out of which they arise—Application for succession certificate—Allegations false—Enquiry under s. 476, Criminal Procedure Code (Act V of 1898)—Order for prosecution under ss. 193 and 209, Indian Penal Code (Act XLV of 1860)—Appeal pending in High Court—Stay of criminal proceedings.* In the course of a proceeding upon an application for revocation of the grant of a succession certificate, the District Judge found that D, the applicant for the certificate, was not, as he alleged, related to the deceased in any way and ordered his prosecution under ss. 193 and 209, Indian Penal Code. D then filed an appeal to the High Court and asked for stay of criminal proceedings pending the hearing of the appeal: *Held*, that to make a declaration in the rule for stay of proceedings as to the correctness or otherwise of the order of the District Judge would be to prejudge an issue which is likely to come before the Bench who will hear the appeal. The proceedings against the appellant under ss. 193 and 209, Indian Penal Code, were stayed pending the hearing of the appeal. *DEBI MAHTO v. KING-EMPEROR* (1916). 20 C. W. N. 1116

STAY OF EXECUTION.

See COMPANIES ACT (VII of 1913), s. 207.

I. L. R. 38 All. 407

STAY OF PROCEEDING.

See STAY OF SUIT.

I. L. R. 43 Calc. 144

STAY OF SUIT.

— *Jurisdiction—Civil Procedure Code (Act V of 1908), s. 10—Stay of*

STAY OF SUIT—*concid.*

proceedings in one of two suits in respect of same subject-matter in different Courts. A, who carried on business at Karachi and employed B, as his commission agent at Calcutta, instituted on 16th February 1915, in the Court of the Judicial Commissioner of Sind at Karachi, a suit against B, for an account and the recovery of whatever sum should be found due on the taking of such account. On 10th March 1915, B instituted in the High Court at Calcutta the present suit against A for the recovery of Rs. 26,665 or in the alternative an account. Thereupon, A applied to have the present suit stayed pending the determination of his suit in the Karachi Court:—*Held*, that the only question that required consideration was whether the Karachi Court has jurisdiction to grant the reliefs claimed. The plaint in the Karachi suit sets out allegations that clearly give jurisdiction to that Court to try the case. The present suit, must, therefore, be stayed till the determination of the suit at Karachi. *PADAMSEE NABAINJEE v. LAKHAMSEE RAISEE* (1915)

I. L. R. 43 Calc. 144

STOPPAGE IN TRANSIT.

See CONTRACT ACT (IX of 1872), s. 103.

I. L. R. 40 Bom. 630

See SALE OF GOODS.

L. R. 43 I. A. 164

STRAITS SETTLEMENTS ORDINANCE (III OF 1893).

See EVIDENCE . L. R. 43 I. A. 256

STRAITS SETTLEMENTS ORDINANCE (VI OF 1896).

ss. 17, 22—

See LIMITATION . L. R. 43 I. A. 113

STRAITS SETTLEMENTS ORDINANCE (XXXI OF 1907).

ss. 133, 196—

See LIMITATION . L. R. 43 I. A. 113

STRIDHAN.

See HINDU LAW—STRIDHAN.

SUBORDINATE COURT.

See LEGAL PRACTITIONERS ACT (XVIII of 1879), s. 14.

I. L. R. 39 Mad. 1045

— jurisdiction of —

See CONTRACT ACT (IX of 1872), ss. 69 AND 70 . I. L. R. 39 Mad. 795

SUBORDINATE JUDGE.

— jurisdiction of —

See WAKE . I. L. R. 43 Calc. 467

SUBROGATION.

See CONTRACT ACT (IX of 1872), s. 70.
I. L. R. 40 Bom. 646

SUBROGATION—*concd*

See MORTGAGE—SUBROGATION

I. L. R. 36 All. 502

Prior mortgage—

Fraudulent suppression of, by vendor If A purchases a property subject to three successive charges X, Y and Z with full knowledge of their existence, and retains a portion of the purchase money in his hands with a view to satisfy the mortgages Y and Z, but subsequently discharges the security Z, he cannot on satisfaction of the mortgage X use it as a shield against the mortgage Y. *Biswaswar Prasad v Lola Sarnam Singh*, 6 O L J 134, and *Hiam v Vogel*, 69 Missouri 329, followed. But where the purchaser found on enquiry that there were only two subsisting charges Y and Z to be satisfied, but discovered after his purchase that there was a prior charge X which was falsely described as satisfied in the mortgage instrument of Y (in a suit upon bond X) *Held*, that from whatever point of view the case may be considered, the purchaser was entitled to priority in respect of the payment made by him to satisfy the first mortgage X. *Mohesh Lal v Mohant Bawan Das*, I L R 9 Calc 961, I L R 10 I A 62, followed. *Held*, also, that the purchaser was not entitled to priority on the basis of the payment made by him to satisfy the second mortgage Y. *HAR SHYAM CROWDHURY v SHYAM LAL SARKU* (1915). I L R. 43 Calc. 69

SUBSTITUTED SERVICE.

See SUMMONS, SERVICE OF

I. L. R. 43 Calc. 447

SUBSTITUTION OF PROPERTY AND SECURITY.

Right of purchaser in court auction to substituted properties—Transfer of Property Act (IV of 1882), ss 2 (d), 8, 36, 44 and 52—Contract to the contrary in s 36 of the Transfer of Property Act After a decree for sale on a mortgage, the mortgagor who was in possession gave a lease of his properties to the first defendant for one year from July 1907 till July 1908 with a covenant for payment of the rent on 10th January 1908. In ignorance of this lease and the reservation of a rent the mortgage properties and the crops were brought to sale in November 1907 and plaintiff purchased the lands together with the crops thereon and the sale was confirmed in December 1907. The crops were harvested in January 1908 by the lessee. In a suit by the purchaser for the rent of the whole year from the mortgagor and his lessee *Held*, (a) that the purchase of the right, title and interest of the mortgagor to the lands and of the standing crops thereon entitled the purchaser to receive the whole rent reserved which was the thing substituted by the mortgagor for the crops, (b) that ss 8 and 36 of the Transfer of Property Act (IV of 1882) were inapplicable as the purchase was in Court auction, (c) that a stipulation to pay rent of a year's lease at particular date is a contract to the contrary within the meaning of s 36 of the Transfer

SUBSTITUTION OF PROPERTY AND SECURITY—*concl*.

of Property Act (IV of 1882), which enacts that the right to rent as between the transferor and the transferee ordinarily accrues from day to day, and (d) that the creation of a lease for one year after a suit and decree on mortgage is not affected by the doctrine of *his pendens*—enunciated in s 52 of the Transfer of Property Act (IV of 1882) as such a lease is an ordinary incident of the beneficial enjoyment of a mortgagor allowed to remain in possession. *SUBBARAJU v SEETHARAMARAJU* (1914). I. L. R. 39 Mad. 283

SUCCESSION.

See AGRA TENANCY ACT (II OF 1901),

s 22 I. L. R. 38 All. 197, 325

See HINDU LAW—IMPARTIBLE ESTATE

I. L. R. 38 All. 590

See HINDU LAW—SIBIRHAN

I. L. R. 43 Calc. 944

See HINDU LAW—SUCCESSION

I. L. R. 43 Calc. 1

I. L. R. 38 All. 117, 417

See MAHANT I. L. R. 43 Calc. 706

See OUDH ESTATES ACT (I OF 1869), ss

8, 10 I. L. R. 36 All. 552

See SABANJAM I. L. R. 40 Bom. 608

Memons—Hindus converted to Mohomedanism—Hindu Law of Succession retained—Migration to Mombasa—Change of custom—Onus of proof—Evidence Memons are a sect of Mahomedans who were converted from Hinduism some four centuries ago but retained their Hindu Law of Succession, and are throughout India governed by that law, save where a local custom to the contrary is proved. Where, however, Memons migrate from India and settle among Mahomedans the presumption that they have adopted the Mahomedan custom of succession should be much more readily made. The analogy in the latter case is rather to proof of a change of domicile than a change of custom. A Memon, whose father some fifty years before the suit had migrated from India and settled with his family among Mahomedans at Mombasa, lived at that place and died there intestate. *Held*, upon evidence as to the practice among Memons at Mombasa and applying the above principle, that the succession to the estate of the deceased Memon was governed by Mahomedan and not by Hindu Law. *ABDURAHIM, HAJI ISMAIL MITRU v HALIMABAI*. I. L. R. 43 I. A. 35

SUCCESSION ACT (X OF 1865).

s 57—Will revocation of—Tear-

ing the will accordingly. *Held*, that this showed the intention of the testator to revoke the will and the partial tearing constituted a sufficient revocation of the

SUCCESSION ACT (X OF 1865)—concl'd.

— s. 57—concl'd.

will within the meaning of s. 57 of the Indian Succession Act. *Elms v. Elms*, 1 Sw. & Tr. 155, distinguished. *Bibb v. Thomas*, 2 W. Bl. 1043, referred to. *JOHUR LAL DEY v. DHIRENDRA NATH DEY* (1915) . . . 20 C. W. N. 304

— ss. 62, 67, 68, 69—

See WILL . . . I. L. R. 40 Bom. 1

— ss. 107, 111—

See HINDU LAW—WILL.
I. L. R. 43 Calc. 432

— s. 191—

See SETTLEMENT BY A HINDU WOMAN BY TRUSTS. . . I. L. R. 40 Bom. 341

— ss. 311, 312—

See WILL . . . I. L. R. 43 Calc. 201

— s. 332—*Aboriginal tribes in Chota Nagpur—Inheritance—Law applicable—Special notification under s. 332 issued at the appellate stage, whether has retrospective effect.* Notification, dated 2nd May 1913, issued by the Government of India under s. 332 of the Indian Succession Act at the appellate stage of a case did not apply where there had already been a decision of a competent court regarding the rights of parties. In the case of codified law the ordinary practice of the legislature is to make special provision when it thinks fit to do so for the saving of custom, usage and ordinary rights. There is no authority that, after customary law has been stereotyped in the form of a statute which contains no provision saving custom, it is open to a Court to give effect to custom, much less to a custom inconsistent with the statute. As the Indian Succession Act contains no clause saving custom, the Courts are not competent to accept custom as a reason for deviating from the provisions of the Act. *TUNI ORAIN v. LEDA ORAIN* (1916) . . . 20 C. W. N. 1082

SUCCESSION CERTIFICATE.

— Certificate refused—

Matters to be proved to entitle applicant to a certificate. A Government promissory note payable to one Madho Sahai was assigned by a registered deed by the legal representative of Mahdho Sahai to one Radhika Prasad. Upon the assignee applying for a certificate of succession in respect of this note, it was refused on this ground that it was not established that the assignor had himself a good and subsisting title to the note. *Held*, that whether the assignor of the applicant had a valid title or not, or whether the assignment conveyed any title to the applicant, or whether the debt secured by the promissory note was recoverable or not, were not matters which the court had to determine upon an application for a certificate. The only question which the court had to decide was whether the applicant was the representative of the person to whom the debt was alleged to

SUCCESSION CERTIFICATE—concl'd.

have been due. *RADHIKA PRASAD BAPUDI v. SECRETARY OF STATE FOR INDIA* (1916)

I. L. R. 38 All. 438

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See SUCCESSION CERTIFICATE.

— s. 4—*Letters of administration—Assignment of debt by holder of letters of administration of debt covered by certificate—Rights of assignee.* A decree for possession of certain property and for mesne profits was passed in favour of A and his wife. The wife died after the date of the decree. A obtained letters of administration in respect of the estate of his wife, and then transferred his own rights under the decree, as also those of his wife to H. H applied for execution of the decree. The judgment-debtors objected, *inter alia*, that the decree could not be executed without letters of administration or a succession certificate being obtained by a transferee. *Held*, that H could execute the decree without taking out fresh letters of administration. *Per WALSH, J.* A person claiming as assignee of a debt which was due to the estate of a deceased person is not claiming "the effects of the deceased." From the date of assignment, the debt due to the deceased ceases to be part of the deceased's effect. The claim contemplated by sub-s. (1) of s. 4 of the Succession Certificate Act is a claim made by a person in the capacity of, and as a personal representative of a deceased person. *GOSWAMI SRI RAMAN LALJI v. HARI DAS* (1916)

I. L. R. 38 All. 474

SUCCESSION DUTY.

See PROBATE . . . I. L. R. 43 Calc. 625

SUDRAS.

— illegitimate sons of—

See HINDU LAW—INHERITANCE.
I. L. R. 40 Bom. 369

See HINDU LAW—SUCCESSION.
I. L. R. 39 Mad. 136

SUIT.

See SUIT FOR CANCELLATION OF DOCUMENT.

— by a Hindu widow, competency of transferee to continue—

See (INDIAN) LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 132, 75.
I. L. R. 39 Mad. 981

— by minor for possession—

See MINOR . . . I. L. R. 38 All. 154

— dismissal of—

See CIVIL PROCEDURE CODE (1908), O. IX, R. 2 . . . I. L. R. 38 All. 357
See CIVIL PROCEDURE CODE (1908), O. XI, R. 21 . . . I. L. R. 38 All. 5

SUIT—*conold*

for ejectment—

See *ARGA TENANCY ACT* (II OF 1901), ss 58, 177 (c) . I. L. R. 38 All. 465

for money had and received—

See *LIMITATION ACT* (IX OF 1908), Sch I, Art 62 . I. L. R. 38 All. 676

for redemption of mortgage—

See *MORTGAGE* . I. L. R. 38 All. 148

to redeem—

See *MORTGAGE* . I. L. R. 38 All. 411

to set aside decree against minor—

See *MIGNON* . I. L. R. 38 All. 452

transfer of—

See *PROVINCIAL SMALL CAUSE COURTS ACT* (IX OF 1887), s 17.
I. L. R. 38 All. 425

valuation of—

See *CIVIL PROCEDURE CODE* (1908), O XXI, r 63 . I. L. R. 38 All. 72**SUIT FOR CANCELLATION OF DOCUMENT.**

Sale deed—Alleged illegality of transaction—Sale by one deed of fixed rate and occupancy holdings The plaintiff by one and for (1) a cupancy ed to a because law not transferable. *BAJRANGI LAL v GHURA RAI* (1916) I. L. R. 38 All. 232

SUIT TO SET ASIDE A DECREE.

Fraud—What constitutes fraud—Transfer of Property Act (IV of 1882), s 90—Application for a decree under s 91 without informing Court of previous refusal to grant such a decree Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s 90 of the Transfer of Property Act, 1882. The Court in that suit granted the plaintiffs a decree for sale but refused them the decree asked for under s 90. Some years afterwards the plaintiffs again applied for a decree under s 90. Notice of this application was duly served upon all the judgment debtors. They did not appear, and the Court granted a decree, but limited it to the assets of the deceased mortgagor. The judgment debtors then filed a suit to have this decree set aside on the ground of fraud, the fraud alleged being mainly that the decree holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s. 90. *Held*, that his neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree, even assuming that the neglect was wilful,

SUIT TO SET ASIDE A DECREE—*conold*

could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s 90 of the Transfer of Property Act. *RAM RATAN LAL v BHURI BEGAM* (1915) . I. L. R. 38 All. 7

SUITS VALUATION ACT (VII OF 1887).See *MADRAS CIVIL COURTS ACT* (III OF 1873), ss 12, 13

I. L. R. 39 Mad. 447

s. 4—

See *COURT FEES ACT* (VII OF 1870), Sch II, Art. 17 . I. L. R. 39 Mad. 602**SUMMARY TRIAL.**

outside British India—

See *EUROPEAN BRITISH SUBJECT*

I. L. R. 39 Mad. 942

SUMMONS CASE.

procedure that of warrant case—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1898), s 256

I. L. R. 39 Mad. 503

SUMMONS, SERVICE OF.

Substituted service—“Due and reasonable diligence”—Practice—Appeal from order refusing to set aside ex parte decree—Civil Procedure Code (Act V of 1908), O V, rr 12, 17, O IX, r 13—Costs For substituted service of summons to be effective, it is essential that the requirements of the rules of the Code should be strictly observed. Knowledge of the institution of the suit, derived by the defendant *alunde* is not sufficient in the absence of proper service of the summons. Where the serving officer on three separate occasions went to the place of business of the defendant's firm, under the erroneous belief that it was his ordinary place of residence, and asked for the defendant and, on not finding him, posted a copy of the writ of summons on the outer door of the premises—*Held*, that this was not sufficient service. Proper enquiries and real and substantial effort should be made to find out when and where the defendant is likely to be found. *Cohen v Nursing Dass Auddy*, I L R 19 Cal 291, followed. *KASSIM EBRAHIM SALEJI v JOHURNULL KHEMKA* (1915)

I. L. R. 43 Calc. 447

SURETY.

rights of, against principal debtor—

See *NEGOTIABLE INSTRUMENTS ACT* (XXVI OF 1881), ss 30, 47, 59, 74, 91 . I. L. R. 39 Mad. 965

Duty of Magistrate to enquire into fitness of each surety on evidence taken by him—Delegation of enquiry to the police or others—Rejection of sureties on a police report—Grounds of rejection—Want of control—Criminal Procedure Code (Act V of 1898), s 122 Under s 122 of the Criminal Procedure Code, a Magistrate must

TITLE—*contd.*

date of the execution of the deed of transfer who both attested it. The defendant set up a title under an alleged will of the deceased Taluqdar. In a suit brought for a declaration of the plaintiff's title to the estate in consequence of the refusal of the Revenue authorities to have his name recorded as proprietor, the Subordinate Judge held that the defendant had no title as the deceased husband had never executed the alleged will, and that the transfer to the plaintiff was valid. On the hearing of an appeal to the Judicial Commissioner's Court by the defendant, he admitted the correctness of the first court's decision as to his want of title. *Held*, that the Court of the Judicial Commissioner was wrong in then allowing the appeal and dismissing the suit on the ground that the widow had no power to transfer the estate. The defendant having no title had no interest which enabled him to support the appeal which should have been dismissed on his admission. *CHANDRIKA BAKSHI SINGH v. ISDAR BIKRAM SINGH* (1916) I. L. R. 38 All. 440

TITLE-DEEDS.

See MORTGAGE . I. L. R. 43 Calc. 1052

— deposit of—

See MORTGAGE . I. L. R. 43 Calc. 895

TITLE PARAMOUNT.**— dispossession by—**

See RENT, SUIT FOR.

I. L. R. 43 Calc. 554

TORT.

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 511

1. ————— Negligence of servants of the Public Works Department—Suit against the Secretary of State for India in Council for damages, if maintainable—Stacking of gravel on a military road—Making and maintenance of roads—Governmental or Sovereign function—nature of—Non-liability of East India Company and Secretary of State for acts done in exercise of Sovereign powers—Exceptions—English and American Laws. Plaintiff sued the Secretary of State for India in Council for damages in respect of injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was stated in the plaint to be a military road maintained by the Public Works Department of the Government. The defendant pleaded a general denial of liability. *Held*, that the plaintiff had in law no cause of action against the Secretary of State for India in Council. *Per WALLIS, C. J.*—In respect of acts done by the East India Company in the exercise of its sovereign powers it could not have been made liable for the negligence of its servants in the course of their employment. The provision and maintenance of roads, especially a military road, is one of the functions of Government carried on in the exercise

TORT—*contd.*

of its sovereign powers and is not an undertaking which might have been carried on by private persons. The liability of the Secretary of State for India in Council is similar to that of the East India Company. *P. & O. Co. v. Secretary of State for India*, 5 Bom. H. C. R. App. 1, followed, *Secretary of State for India v. Moment*, 40. I. A. 48, referred to; and *Vijaya Raghava v. Secretary of State for India*, I. L. R. 7 Mad. 466, doubted. *Per SESHAGIRI AYYAR, J.*—The analogy of the Crown in England has no application to the Secretary of State for India in Council. The principle that the Crown can be sued only for remedies contemplated by the Petition of Right is confined in its operation to the United Kingdom: and a general liability for torts is dependent upon the law of the particular dominion wherein the action is instituted. Under 21 and 22 Viet., cap. 106, the Secretary of State for India in Council is under the same liability as the East India Company was subject to. The East India Company had two distinctive functions which are even to-day exercised by the Government of India, namely (i) the exercise of sovereign rights, and (ii) the carrying on of transactions which could have been carried on by private individuals or trading corporations. In the former case, the East India Company was generally exempt from liability. The distinction between sovereign power and powers exercisable by private individuals is that in the former case no question of consideration comes in, whereas the essence of the latter is that some profit is secured or some special injury is inflicted in the exercise of the individual rights. The making and maintenance of roads is a Government or sovereign function. English and American Law on subject considered. *THE SECRETARY OF STATE v. COCKCRAFT* (1914)

I. L. R. 39 Mad. 351

2. ————— Defamation—Suit for damages—Defamatory statement made and published outside British India—Defendant resident in British India—Suit in British India, if maintainable—Order of excommunication from caste passed by Raja of Cochin—Communication of, to the Kariasta of a Temple in British India—Transmission by Kariasta to Pattamalai—Publication, meaning of—Justification. A Court in British India has jurisdiction to entertain a suit for damages for a personal tort committed by a person beyond the limits of British India, if he resides within the local limits of its jurisdiction at the time of the suit. This rule is in accordance with the principles of Private International Law recognized in England and the Code of Civil Procedure (Act V of 1908) indicates that the same rule is to be followed by the Courts in British India. When the cause of action alleged in a plaint is a personal tort committed outside the local limits of the jurisdiction of the Courts of British India, unless the act is wrongful according to the law both of British India and of the place where the act is committed, the suit will not be sustainable. *The M. Moxam*, (1876) P. D. 107

TORT—*con. d.*

The Hailey, L R 2 P C 193, *Phillips v Eyre*, L R 6 Q B 1, and *Curr v Francis, Davies & Co.*, [1902] A C 176, followed Publication in regard to libel and slander does not require communication to more persons than one, there need not be anything like publication in the common acceptance of the term *King v Burdett*, 4 B & Ald 95, and *Pullman v Hill and Co.*, [1891] 1 Q B 524, referred to Where a subordinate officer received from his superior in the course of his official duty a copy of an order alleged to contain defamatory statements regarding the plaintiff, and transmitted the same in his turn (as he was bound to do) to his official subordinate *Held*, that he was not liable in damages for defamation against the plaintiff, as his action was justified in law GOVINDAN NAIR & ACHUTHA MENON (1915) I. L. R. 39 Mad. 433

TRADING WITH THE ENEMY.

See CONTRACT ACT (IX OF 1872), ss 66 (2), 65 I. L. R. 40 Bom. 570

See SALE OF GOODS

I. L. R. 40 Bom. 11

TRAFFICKING IN OFFICES.

See CONTRACT I. L. R. 43 Calc. 115

TRANSFER.

See PENAL CODE ACT (XLV OF 1860), s 228 I. L. R. 38 All. 284

See PRE EMPTION I. L. R. 38 All. 361

See TRANSFER OF PROCEEDINGS

See TRANSFER OF SHARES

of decree for execution—

See CIVIL RULES OF PRACTICE, R 161 (a) I. L. R. 39 Mad 485

with consent of reversioners—

See TITLE, SUIT FOR DECLARATION OF I. L. R. 38 All. 440

TRANSFER OF DECREE.

See SPECIFIC PERFORMANCE

I. L. R. 43 Calc. 990

TRANSFER OF GOODS.

to creditor.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s 57

I. L. R. 39 Mad. 250

TRANSFER OF MANAGEMENT.

See TRUSTEES OF A TEMPLE

I. L. R. 39 Mad. 456

TRANSFER OF PROCEEDINGS.

See DIVORCE ACT, (IV OF 1869), ss 3, 16, 37, 41 I. L. R. 40 Bom. 109

TRANSFER OF PROPERTY ACT (IV OF 1882).

ss. 2 (d) 8, 36, 44, 52—

See SUBSTITUTION OF PROPERTY AND SECURITY I. L. R. 39 Mad. 283

ss. 3, 78—

See MORTGAGE I. L. R. 43 Calc. 1052

ss. 5, 6, 7 and 127—*Minor—Validity of transfer in favour of a minor Held*, that, inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immovable property, so a minor in whose favour a valid deed of sale has been executed is competent to sue for possession of the property conveyed thereby *Ulfat Ras v Gauri Shankar*, I L R 33 All 657, and *Raghunath Baksh v Hayi Sheikh Muhammad Baksh*, 18 Oudh Cases 115, referred to *Mohori Bibee v Dharmadas Ghosh*, I L R 30 Calc 639, and *Navakoth Narayan Chetty v. Logalinga Chetty*, I L R 33 Mad 312, distinguished. MUNNI KUNWAR v MADAN GOPAL. (1915) I. L. R. 38 All. 82

s. 6—

See EXPECTANCIES

I. L. R. 39 Mad. 554

Compromise of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights B claimed adversely to M the property left by M's deceased father The claim was compromised, and B for a consideration of Rs 5,000 and some immovable property, withdrew his claim and recognized the title of M as absolute owner M, died, and the property passed to her husband K who sold part of it to S Held, on suit by S to recover possession of the property so purchased, that the compromise by B of his claim against M was not obnoxious to the prohibition contained in s 6 of the Transfer of Property Act, 1882, as being a sale of reversionary rights Mohammad Hashmat Ali v. Kamiz Fatima, 13 All L J 110, referred to BARATI LAL & SALIK RAM (1915)

I. L. R. 38 All. 107

s. 8, cl. (a)—

See OFFERINGS TO A TEMPLE

I. L. R. 43 Calc. 28

s. 40—*Specific Relief Act (I of 1877), s 3—Indian Trusts Act (II of 1822), s 91—Suit for declaration and possession—Sale—Prior agreement of purchase—Notice—Subsequent purchaser, a trustee Plaintiff sued for a declaration of title to and for possession of immovable property from the defendant He based his title upon a registered sale deed dated the 5th December 1911 from one N Prior to this date the plaintiff had notice of the execution of a contract of sale of the same property by N to the defendant The defendant relied upon his possession under the contract of sale and contended that he had paid to N portion of the purchase money agreed upon and the balance was to be paid after the*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*s. 40—*concl'd.*

sale deed was passed. Both the lower Courts allowed the plaintiff's claim for possession though it was found that the plaintiff had notice of the defendant's contract of sale and that nearly half the purchase money was in fact received by N from the defendant under the contract. The defendant having appealed. *Held*, that the plaintiff having purchased with notice of the defendant's contract, his suit for possession must fail. He stood in the position of a trustee for the defendant of the land purchased by him and could not profit by his conveyance except to stand in the shoes of his vendor and receive the balance of the purchase money due, on payment of which he would have to convey to the defendant. *Lalchand v. Lakshman*, I. L. R. 28 Bom. 466, and *Kurri Veerareddi v. Kurri Bapireddi*, I. L. R. 29 Mad. 336, doubted. *GANGARAM v. LAXMAN GANOBA* (1916) . I. L. R. 40 Bom. 498

s. 41—

1. ———— *Husband's property sold by wife—Bonâ fide purchaser for value, "without notice"—His rights—"Without notice," significance of the expression—Husband's right to redemption.* Where, during the husband's absence on pilgrimage, the wife sold a piece of land, which had before the husband's departure been mortgaged by her the purchaser who paid off the mortgage having by proper enquiries satisfied himself that the wife was owner: *Held*, that the husband could not recover the land, nor was he entitled to be allowed to redeem the mortgage. *NIRAS PURBE v. TETRI PASIN* (1915) 20 C. W. N. 103

2. ———— *Ostensible owner, transfer by when binds real owner—Res judicata.* In a suit by A to recover from B property the title to which was disputed between A and B, M in whose favour B had on 14th March 1893 executed a usufructuary mortgage—in lieu whereof on 21st January 1895 another mortgage was executed in his favour by B—was made a defendant apparently on the ground of his being a transferee under the mortgage of 14th March 1893. The suit was decreed. In a suit by M to enforce his mortgage of 21st January 1895, which the representative in title of A contested, the High Court held that the decision in the previous suit was *res judicata*; and also that s. 41 of the Transfer of Property Act did not apply to give M a title, although B had got his name entered in the Revenue papers as owner, because the application for the entry having been opposed by A, B could not be said to have been entered as ostensible owner with A's consent, and also because if M had made enquiries before he advanced money to B, he could have discovered the fact of B's opposition and facts showing B's title. The Judicial Committee on appeal found the judgment of the High Court to be so satisfactory and sufficient that they felt themselves justified

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*s. 41—*concl'd.*

in advising the dismissal of the appeal without following the practice of making an elaborate report. *NAGESHAR PRASAD PANDE v. PATESHRI PARTAB NARAIN SINGH* (1915)

20 C. W. N. 265

s. 48, cl. (c)—

See CONSTRUCTION OF DOCUMENT.

I. L. R. 40 Bom. 378

s. 53—*Debtor and Creditor—Suit to set aside deed as being void as delaying or defeating creditors—Deed made on good consideration—Preferrence by debtor to one creditor rather than another where debtor retains no benefit for himself.* In this appeal their Lordships of the Judicial Committee upheld the decision of the High Court, which is reported in I. L. R. 34 Calc. 999, at page 1003. The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditors for the benefit of the debtor. The debtor must not retain a benefit for himself. He may pay one creditor, and leave another unpaid. *In re Moroney*, L. R. 21 Ir. 27, and *Middleton v. Pollock*, L. R. 2 Ch. D. 104, followed. When it was found that the transfer impeached was made for adequate consideration in satisfaction of genuine debt and without reservation of any benefit to the debtor, it followed that no ground for impeaching it lay in the fact that the plaintiff (appellant), who also was a creditor, was a loser by payment being made to the preferred creditor—there being in the case no question of bankruptcy. *MUSAHAR SAHU v. LALA HAKIM LAL* (1915) . I. L. R. 43 Calc. 521

s. 54—

See SALE . I. L. R. 43 Calc. 790

1. ———— *Agreement to sell land not creating any interest therein—Rule of perpetuities, not offending—Specific Relief Act (I of 1877), s. 27(b)—Indian Contract Act (IX of 1872), s. 37.* A contract to convey or reconvey immoveable properties whenever demanded, for a certain amount is only a personal contract and does not create any interest in immoveable property and is therefore enforceable and not void as contravening the rule against perpetuities. *South-Eastern Railway v. Associated Cement Manufacturers, Limited*, [1910] 1 Ch. 12, 33, followed. *Kolathu Ayyar v. Ranga Vadhyar*, I. L. R. 38 Mad. 114, distinguished. *Per CURIAM*:—The contract is also enforceable according to s. 37 of the Indian Contract Act (IX of 1872) against the representatives of the contracting parties. *CHARAMUDI v. RAGHAVULU* (1915) I. L. R. 39 Mad. 462

2. ———— *Sale-deed of property in possession of tenants—Deed should be registered.* A house which was in the possession of defendants as tenants was sold to them by the owner in 1909 for Rs. 50 by an unregistered deed of sale. It was again sold in 1910 by the owner to the plaintiff.

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s. 54—*concl'd*

iff by a registered sale deed The plaintiff having sued to recover possession *Held*, that the defendants were entitled to set up their sale deed to defeat the plaintiff's claim, for the deed though earlier in point of time required registration, as the only interest which the vendor had at the date of the sale was a 'reversion' in the house, within the meaning of s. 54 of the Transfer of Property Act (IV of 1882) *BHASKAR GOPAL v. PADMAN, HIRA* (1915)

I. L. R. 40 Bom. 313

3 ——— Transfer of immovable property of less than Rs 100 in value to mortgagees with possession on failure to pay off mortgage—*Oral transfer—Delivery of possession, necessity of—Formal delivery* Where immovable property of less than Rs 100 in value was first mortgaged to A with possession, and then on mortgagor's failure to pay up the mortgage amount, the latter on 5th March 1906 orally sold the property to A, and at the same time formally delivered possession by pointing out boundaries, by endorsing on the back of the mortgage bond the fact of the sale and by handing it over to A, and the mortgagor on 24th June 1906 sold the pro-

and the requirements of s. 54 of the Transfer of Property Act having thus been satisfied, title passed to A and B's suit to recover the property from A must fail *Sibendrapada Banerjee v. Secretary of State for India, I L R 34 Cal. 207*, distinguished. *SONAI CHUTIA v. SONARAM CHUTIA* (1915) 20 C. W. N. 195

ss. 54, 55—

See MINOR

I. L. R. 39 All. 154

s. 55 (f)—Sale of land—Vendor and purchaser—Vendor's direction to pay purchase money to a third party on his behalf—Existence of vendor's lien, in spite of A contract to forego the vendor's charge for unpaid purchase money is not to be necessarily inferred when the whole or part of the consideration for the purchase of immovable property is agreed to be paid by the purchaser to a third party on behalf of the vendor *Abdulla Beary v. Mangala Beary, I L R 33 Mad 446*, and *Sivasubramania Mudaliar v. Gnana Sambanda Pandarah Sannadhi, 21 Mad L J 359*, overruled. *Webb v. Macpherson, I L R 31 Cal. 57*, referred to *SIVASUBRAMANIA AYYAR v. SUBRAMANIA AYYAR* (1916)

I. L. R. 39 Mad. 997

s. 55 (f) (b)—Sale—Vendor's lien—Lien not enforceable against subsequent purchaser without notice The vendor's lien for unpaid purchase money provided for by s. 55 (f) (b) of the Transfer of Property Act, 1882, cannot be enforced against the property in the hands of subsequent transferees for value without notice of

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s. 55—*concl'd*

the lien *Webb v. Macpherson, I L R 31 Cal. 57*, distinguished *GUR DAYAL SINGH v. KARAM SINGH* (1916) I. L. R. 38 All. 254

s. 57—

See MORTGAGES

I. L. R. 39 Mad. 419

ss. 58, 60, 98—

Possessory mortgage in 1891 for one year with a covenant to treat it as sale, in default of payment—Anomalous mortgage—No right to redeem after one year A document of 1891, which was described as a 'Swadina Tanaka Meddattu Sharatu Pattiram' which may be translated as a possessory mortgage deed con-

ained
"within these
thatched house

thereon we have mortgaged, that is we have kept it as a possessory mortgage and have received Rs 10 from you So having paid the principal and interest pertaining to these Rs 10 within the end of a year from the said date we shall take possession of our house and site If we do not act according to the said condition we shall quit the land and house as if this is a sale" In a suit for redemption brought after the date fixed for redemption *Held*, that the transaction was an anomalous mortgage as described in s. 98 of the Transfer of Property Act (IV of 1882), that the rights of the parties were governed by the terms of the mortgage document and that accordingly the plaintiff had no right to redeem after the period of one year fixed by the document The right of redemption given by s. 60 of the Transfer of Property Act to every mortgagor has no application to cases governed by s. 98 of that Act *Sreenivasa Iyengar v. Radakrishna Pillai, I L R 38 Mad 667*, referred to *Usman Khan v. Dasanna, I L R 37 Mad 545* distinguished *HAKEM PATTE MUHAMMAD v. SHAIK DAVOOD* (1916) I. L. R. 39 Mad. 1010

s. 59—

by two witnesses within the meaning of s. 59 of the Transfer of Property Act, inasmuch as there was nothing to show that the person whose name appeared on the document as an attesting witness had authorised the scribe to sign it for him and therefore it could neither operate as a mortgage nor create a charge on immovable property *PARAM HANS v. RANDHIR SINGH* (1916) I. L. R. 38 All. 461

DIGEST OF CASES.

(411)

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s. 59—concl'd.

2. *Attestation*—Person subscribing as scribe if attesting witness. *Per CHAMIER, C. J.*—To be an attesting witness within the meaning of s. 59 of the Transfer of Property Act, the witness must not only have seen the execution of the document but should have also subscribed as a witness. *Shamu Patil v. Abdul Kadir, L. R. 39 I. A. 218; s. e. J. L. R. 35 Mad. 607; 16 C. W. N. 1000, Raj Narain Ghose v. Abdul Rahim, 5 C. W. N. 154, Dinamoyi Debi v. Bon Behari Kapur, 7 C. W. N. 169, and Budri Prasad v. Abdul Karim, I. L. R. 35 All. 251, referred to.* Where a person who subscribed a mortgage bond as scribe was proved to have been present when the document was executed and the lower Appellate Court upon this and other evidence found that he was the document executed and held that he was an attesting witness within the meaning of s. 59 of the Transfer of Property Act: *Held, per CHAMIER, C. J.*—That although on the finding he must be held to have seen the mortgage-deed executed, the scribe was not an attesting witness as he did not subscribe as a witness. *Per JWAHA PRASAD, J.*—That in the absence of evidence showing that he had witnessed the execution it could not be presumed that he had. A scribe of a deed who has witnessed the execution may sign the deed because he has done so, and yet describe himself as a scribe. *RAM BHADUR SINGH v. AJODHYA SINGH (1916)* 20 C. W. N. 699

ss. 60, 67—93—Suit for redemption—Decree in favour of mortgagor as defendant, for redemption and recovery of possession in execution—Decree, not executed by mortgagee or mortgagor—Suit for redemption by mortgagee sued for of—*Res judicata.* Where a mortgagee sued for sale on a mortgage bond of 1864 and obtained a decree in 1872 which contained a provision, in favour of the mortgagor who was a defendant therein, for redemption and recovery of possession of the mortgaged lands in execution of the decree but the decree was not executed by the mortgagor for redemption of the mortgage was barred by the rule of *res judicata.* *Vedapuratti v. Valabha Valiya Raja, I. L. R. 25 Mad. 300, and Adipuram Pillai v. Gopalasami Mudali, I. L. R. 31 Mad. 354, referred to.* *Rama v. Bhagchand, I. L. R. 39 Bom. 41, dissented from.* *RANGA AYYANGAR v. NARAYANA CHARIAR (1915)* I. L. R. 39 Mad. 896

s. 65 (c)—Duty of a mortgagor in possession to pay public charges, purely personal—Acquisition of equity of redemption by trespasser—Non-payment of public revenue and purchase of mortgagor in revenue sale—Extinguishment of mortgagor's implied covenant on the part of the transferee mentioned in s. 65, cl. (c)

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s. 65—concl'd.

of the Transfer of Property Act (IV of 1882), to pay all public charges is in the nature of a personal covenant and is not one arising by virtue of his being in possession of the mortgaged property. Hence, if after the creation of a simple mortgage, a stranger acquires the equity of redemption by adverse possession as against the mortgagor, the acquirer is under no duty towards the mortgagee to pay the public revenue payable on the property; and therefore, if after allowing it to be sold for arrears of revenue, he buys it himself, he holds it free from the mortgage. The rule that no man can take advantage of his fraud does not apply to a case like this, where the party charged with fraud does not stand in any fiduciary relation to, or has a joint interest with, the person defrauded and is under no duty to protect his interests. *Nawab Sidhee, Nuzur Ally Khan v. Rajah Ojoodhyaram Khan, 10 Moo. I. A. 510, distinguished.* *Quare:* Whether an assignee for value from the mortgagor is affected by the mortgagor's covenant to pay the public charges? *SUBBIAH v. RAMI REDDI (1916)* I. L. R. 39 Mad. 959

s. 67, cl. (d)—

See MORTGAGE . I. L. R. 39 Mad. 17

s. 76, cl. (c)—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879) I. L. R. 40 Bom. 48

s. 83—Usufructuary mortgage—Hypothecation—Deposit of usufructuary mortgage amount—Refusal by mortgagee—Subsequent interest at enhanced rate—Penalty—Deposit of compound interest at the original rate only, sufficiency of—Acceptance by Court, as reasonable compensation, effect of—Mesne profits claim for, by plaintiff from date of deposit, if sustainable. The plaintiff, as the usufructuary mortgage as well as a hypothecation in favour of the defendant sought to recover property on payment of mortgage under the Transfer of Property Act. The defendant claimed that the plaintiff should deposit the amount due under the hypothecation bond as well as due for principal and interest on the bond, but calculated compound interest at the original rate and not at the enhanced rate, default as mentioned in the bond, disallowed provision as penal. The Court held the interest as reasonable compensation. The plaintiff claimed mesne profits from the first deposit, but the defendant disputed to any mesne profits as the plaintiff did not pay the full amount specified in the bond (i) that the plaintiff was bound to

TRANSFER OF PROPERTY ACT (IV OF 1882)

—concld

s. 83—concl.

by the Court as proper, was legally sufficient to entitle the plaintiff to mesne profits from the date of the second deposit **AYIAKUTTI MAR KONDAN v PERIYASWAMI HAYANDAN** (1913)

I. L. R. 39 Mad 579

ss. 88, 89—Civil Procedure Code (Act XII of 1882), s. 214—Limitation Act (XV of 1877), Sch. II, Arts. 178, 179—Civil Procedure Code (Act I of 1908), s. 97, O XXXIV, rr. 1 and 5—Order passed under s. 88 of the Transfer of Property Act if not appealed against cannot be questioned in an appeal from the decree absolute for sale. In 1907, a suit was filed to recover the

made, and a final decree for sale was made on the 15th March 1912. Defendant No. 1 appealed against the decree of 1912, and raised substantially points against the decree of 1910. The lower appellate Court held that the defendant not having appealed against the preliminary decree within time, was precluded, by s. 97 of the Civil Procedure Code (Act V of 1908), from disputing its correctness in an appeal preferred from the final decree. The defendant appealed to the High Court contending that the suit having been filed in 1907, the right of appeal which he had under the Civil Procedure Code of 1882 was

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in an application for an order absolute under s. 89 or in an appeal from an order absolute made on such an application. **MUKLIDHAR NARAYAN v VISHNUPRASAD** (1915)

I. L. R. 40 Bom. 321

s. 90—

See **SUIT TO SET ASIDE A DECREE**

I. L. R. 38 All 7

s. 95—

See **LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 134, 144**

I. L. R. 38 All 133

TRANSFER OF PROPERTY ACT (IV OF 1882)

—concl

ss. 105, 107—Agreement to let land on payment of annual rent—Construction of building in reliance on agreement—Licence—Remedy of licensee for wrongful eviction. The defendant's father gave the plaintiffs permission to build a *gola*, or market place, on a certain plot of land, the latter agreeing to pay Rs. 6 a year as ground rent, but no lease was executed. The plaintiffs began to build the *gola*, but before it was finished they were evicted by the owner of the land. Held, on suit by the plaintiffs for possession and for an injunction to prevent the defendant from interfering with the *gola*, that the plaintiffs were not lessees but mere licensees, and that their remedy if any was by way of a suit for damages for the wrongful revocation of their licence. **BASDEO RAI v DWARKA RAM** (1915)

I. L. R. 38 All. 178

ss. 106, 107—Land held not for agricultural or manufacturing purpose on oral settlement at an annual rent—Presumption that tenancy annual—Contract to the contrary, not valid, because not registered—Notice, length of. Where, there being no written lease, the tenants were found to have been holding the land on an annual rent of Rs. 15 and not for an agricultural or manufacturing purpose. Held, that from the fact that the rent was an annual rent, the presumption ought to be drawn that the tenancy was an annual tenancy. That, in the absence of anything to rebut the presumption, s. 106 of the Transfer of Property Act, if it stood alone, would be inapplicable, there being a contract to the contrary, within the meaning of that section. This contract, however, not being in writing and registered was invalid under s. 107. That the tenancy was therefore terminable under s. 106 on fifteen days' notice expiring with the end of a month of the tenancy. **Durga Nikarni v Gobaradhan Bost**, 19 C. W. N. 525 s. c. 20 C. L. J. 418, 454, referred to **AKLOO v ENAYON** (1916)

20 C. W. N. 1005

ss. 108 (1), 2 (c)—Lease from year to year in existence from before 1882—Transferability—Custom—Onus—Sublease, transfer by way of—Landlord if may recover *khas* possession. A lease of homestead land from year to year which was in existence of Property s. 108 cl. (1) transferable absolutely or by way of sublease. Such leases are not transferable except by custom, the burden of proving which is on the party who sets it up. Whether a tenant from year to year had power before the Transfer of Property Act to transfer the holding by way of sublease or not where it appeared that the tenant had abandoned the lands without arranging for payment of rent, and no rent had been paid by him since the *para*, and that the transaction was in substance though not in form an assignment. Held, that the landlord was entitled to recover *khas* possession of the land. **AVANDA MOHAN SAHA v GOBINDA CHANDRA RAY CHOUDHURY** (1915)

20 C. W. N. 322

TRANSFER OF PROPERTY ACT (IV OF 1882)
—concl'd.

ss. 123, 129—*Gift—Validity of gift of immovable property—Mahomedan law.* Where a Mahomedan had made a gift of immovable property which was valid according to Mahomedan law, it was held that the gift was none the less valid because the donor had executed a deed of gift purporting to convey the property to the donee, which owing to a defect in the attestation, was invalid according to the provisions of the Transfer of Property Act, 1882. *KARAM ILAHI v. SHARF-UD-DIN* (1916)

I. L. R. 38 All. 212

TRANSFER OF SHARES.

See COMPANIES ACT (VI OF 1882), ss. 58, 147 . . . I. L. R. 40 Bom. 134

TRANSFERABILITY.

See OFFERINGS TO A TEMPLE.

I. L. R. 43 Calc. 28

TRANSFeree.

See DEPOSIT IN COURT.

I. L. R. 43 Calc. 100

— of trust estate, liability of—

See TRUSTEE . . . I. L. R. 39 Mad. 115

TRESPASS.

Trespass, action for—
Who may sue, tenant or owner—Title by adverse possession not pleaded, if may be allowed in the Court of Appeal—Civil Procedure Code (Act V of 1908), O. XLI, r. 24—Adverse possession against Municipality or the Crown. Per SANDERSON, C. J., and MOOKERJEE J.—The tenant is the proper plaintiff to sue for trespass committed in respect of the land, and the reversioner can only sue for trespass if the alleged trespass is injurious committed in respect of the land, and to the reversion. Per SANDERSON, C. J.—Even though the trespass is accompanied by a claim of right, it is not necessarily injurious to the reversionary estate. *Baxter v. Taylor*, 4 Barn. & Ad. 72, referred to. Per WOODROFFE, J.—It is not sufficient for the plaintiff in an action in ejectment to prove possession. He must show title. Per MOOKERJEE J.—Mere previous possession will not entitle a plaintiff to a decree for recovery of possession, except in a suit under s. 9 of the Specific Relief Act. *Purmeshwar v. Brojolah*, I. L. R. 17 Calc. 256, *Nishachand v. Kanchiram*, I. L. R. 26 Calc. 579 : s. c. 3 C. W. N. 568, *Shama Charan v. Abdool*, 3 C. W. N. 158, and *Manik Borai v. Banicharan*, 13 C. L. J. 649, referred to. The plaintiff may be allowed to succeed on a title by adverse possession pleaded for the first time in the Court of Appeal, provided such a case arises on the facts stated in the plaint and the defendant is not taken by surprise. *Sundari Dossee v. Madhu Chunder*, I. L. R. 14 Calc. 592, *Vasudeva v. Maguni*, L. R. 28 I. A. 81, 88 : s. c. 5 C. W. N. 545, *Majkal v. Thanbussamy*, (1914) Mad. W. N. 784, *Somasundaram*

TRESPASS—concl'd.

v. Vadivelu, I. L. R. 31 Mad. 531, *Shirokumari v. Govind Shaw*, I. L. R. 2 Calc. 418, *Joytara v. Mahomed Mobaruck*, I. L. R. 8 Calc. 975, and *Bijoya v. Bydonath*, 24 W. R. 444, referred to. To establish a title by adverse possession, the plaintiff must prove enjoyment possessing the same characteristics as are necessary for presumption of a lost grant and consequently that the possession was adequate in continuity, in publicity and in extent, to extinguish the title of the true owner. *Subramania v. Secretary of State*, 21 Mad. L. J. 132, and *Radhamani v. Collector of Khulna*, I. L. R. 27 Calc. 943 : s. c. 4 C. W. N. 593, 690, referred to. Per WOODROFFE, J.—Where in a suit for declaration of title and possession, the plaintiff did not in the alternative plead title by adverse possession, the plaintiff cannot ask the Court to frame such an issue on appeal except by amendment, and O. LXI, r. 24, which authorises the Court to remodel the issues does not apply to such a case. *RAM CHANDRA SIL v. RAMANMANI DAS* (1916)

20 C. W. N. 773

TRESPASSER.

— purchase by—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 65 (c) . I. L. R. 39 Mad. 959

TRIAL.

See JOINT TRIAL.

See SUMMARY TRIAL.

I. L. R. 39 Mad. 942

TRUST.

See CHARITABLE OR RELIGIOUS TRUST.

I. L. R. 40 Bom. 439

See CHARITABLE TRUST.

See MAHOMEDAN LAW—GIFT.

I. L. R. 38 All. 627

See MORTGAGE . I. L. R. 38 All. 209

See RESULTING TRUST.

I. L. R. 40 Bom. 341

See WILL . . . I. L. R. 38 All. 214

TRUSTEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . I. L. R. 40 Bom. 439

— appointment of—

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 43 Calc. 1085

— compromise of suit by—

See TRUSTEE . I. L. R. 39 Mad. 115

— suit by, against co-trustee—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . I. L. R. 40 Bom. 439

Trustee of Ramnad Estate—Discretion of trustees—Powers improperly and unreasonably exercised—Liability of transferee of trust estate—Compromise of suit by trustee—Decree ordering party benefiting by breach of Trust to

TRUSTEE—concl'drep
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the plaintiff (respondent) was the minor Raja of Ramnad. The first defendant (appellant) was a creditor of the late Raja and the party in whose favour the three instruments which the suit sought to set aside were made. The second defendant was the trustee appointed under a deed of settlement executed by the late Raja on 12th July 1895. The suit was brought for a

The validity of the deeds was largely dependent on the consideration of whether the trustee under the voluntary settlement of 12th July 1895 had

the circumstances of the case, the power of the trustee was not exercised properly and reasonably, and in the deed of and that be regarded as therein comp the conclusions of the High Court both as to the validity of the deed of compromise and of the two mortgages, and as to the amount of the repayment ordered to be made by the appellant to the credit of the trust estate. Even if the deed of compromise could be supported on other grounds it was invalid as not complying with the condition imposed by s 462 of the Civil Procedure Code, 1882, in that, one of the parties to the suit being a minor, the sanction of the Court to the making of the compromise had not been obtained. *Manohar Lal v Jadu Nath Singh*, 1 I L R 28 All 585, 589, L R 33 I A 128, 131, Per Lord Macnaghten, and *Ganesa Row v Tularam Row*, 1 I L R 36 Mad 295, L R 40 I A 132, followed. **SUBRAMANIAN CHETTIAR v RAJA RAJESWARA DOBAI** (1915)

I. L. R 39 Mad. 115

TRUSTEES ACT (XV OF 1866).

— ss 8, 20, 32—

See RECEIVER I. L. R. 43 Cal. 124

TRUSTEES, DE FACTO.

See TRUSTEES OF A TEMPLE

I. L. R. 39 Mad. 456

TRUSTEES OF A TEMPLE.

Transfer of management—Void or voidable—Setting aside, if necessary

TRUSTEES OF A TEMPLE—cont'd

iffs—Abandonment of the demand—Decree in favour of plaintiffs and defendants, if can be given—De facto trustees—Expenses during management—Right for reimbursement—Right to retain possession of trust property—Indian Trusts Act (II of 1882), s 32—Decree for possession and for account—Provision for account of expenses incurred in the final decree. The plaintiffs, who were the *hukdars* (trustees) of a temple, brought the suit on the 30th January 1911 to recover possession of the temple properties from the defendants to whom the trustees had made over the management of the temple under an agreement dated 21st June 1901. The plaintiffs alleged in the plaint that the ninth and the tenth defendants (who were also originally *hukdars*) had lost their right to the office owing to their neglect to discharge its duties and that they were joined as defendants merely because they asserted a right to it. But at the trial in the original Court the plaintiffs abandoned this contention. The defendants contended, *inter alia*, that the suit was bad for non joinder of all the trustees as plaintiffs and was barred under art 91 of the Limitation Act, and that the defendants were entitled to be reimbursed out of the trust properties for expenses properly incurred by them during their management and to retain possession of the properties until they were so reimbursed. The lower Court passed a decree in favour of the plaintiffs and the ninth and the tenth defendants for possession and a preliminary decree for accounts against the defendants. *Held*, that the objection as to non joinder was not sustainable, but that a decree could be passed in favour of the plaintiffs and the ninth and the tenth defendants as trustees with the consent of the latter and the other defendants. *Kokilasari Dasi v Mahant Rudranand Goswami* 5 C L J 527, distinguished. The transfer to the defendants being void, did not require to be set aside. Art 91 of the Limitation Act did not apply to the suit but Art 124 was the Article that was applicable, and under that Article the suit was not barred. *Mallayyan v Narhari*, 1 I L R 25 Bom 337, followed. *Gnana Sambhanda Pandara Sannadhi v Velu Pandaram*, 1 I L R 23 Mad 371, explained. *Sidhu Saku v Gopacharan*, 17 C L J 233, referred to. A trustee of a public charitable endowment, like a trustee of a private trust is entitled to reimburse himself all expenses properly incurred in connection with the trust, and has a first charge enforceable only by prohibiting any disposition of the trust property without previous payment of such

of a public charitable trust to take the trust property out of the possession of persons not entitled to hold it, while making due possession for any claims that they may have in respect of expendi.

TRUSTEES OF A TEMPLE—concl'd

ture properly incurred in connection therewith. *Held*, consequently, that the defendants were not entitled to retain possession of the suit properties, but that the preliminary decree should direct that accounts should be taken as to what was due to the defendants from the trust, leaving it to be determined by the final decree how such claim, if established, should be enforced. *NARAYANAN v. LAKSHMANAN* (1915).

I. L. R. 39 Mad. 456

TRUSTS ACT (II OF 1882).

ss. 32—

See TRUSTEES OF A TEMPLE.

I. L. R. 39 Mad. 456

s. 42—

See TRUST . I. L. R. 39 Mad. 597

s. 83—

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS . I. L. R. 40 Bom. 341

s. 90—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

s. 91—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 40 . I. L. R. 40 Bom. 498

U**ULTRA VIRES RULES.**

See ADEN SETTLEMENT REGULATION (VII OF 1900), s. 13.

I. L. R. 40 Bom. 446

UNAUTHORISED ACT.

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 511

UNCONSCIONABLE INTEREST.

See INTEREST . I. L. R. 43 Calc. 632

UNDEFENDED SUIT.

See EX PARTE DECREE.

I. L. R. 43 Calc. 1001

UNDER-RAIYAT.

See LANDLORD AND TENANT.

I. L. R. 43 Calc. 164

Status of under-raiyat where raiyat evicted from occupancy-holding for non-payment of rent in Chota Nagpur—Interest of under-raiyat, void or voidable—Distinction between proceedings with respect to a tenure-holder and a raiyat—Right of under-raiyat to contest the validity of the decree against his lessor. Where a holding of an occupancy raiyat is sold, the interest of an under-

UNDER-RAIYAT—concl'd.

raiyat is not void but voidable. But when the occupancy holding has been destroyed by eviction of the raiyat for non-payment of rent, s. 82 of Act X of 1859 provides that the decrec-holder shall be put in physical possession of the land. There is a clear distinction between proceedings in regard to a tenure-holder and proceedings in regard to a raiyat. Where the proceeding has been with regard to a tenure-holder or under-tenant the decree is to take the form of an order to all raiyats to pay rent to the decrec-holder, and the decrec-holder cannot be put into actual physical possession of the land. An under-raiyat cannot contest the validity of the decree against his lessor as a defence to a suit in which it is sought to declare him a trespasser. *BISHUN NARAIN DASS PODDAR v. CHANDRA KANTA NAIK* (1916).

20 C. W. N. 1240

UNITED PROVINCES AND OUDH ACTS.

1869—I—

See OUDH ESTATES ACT.

1873—XIX—

See N. W. P. LAND REVENUE ACT.

1876—XVII—

See OUDH LAND REVENUE ACT.

1900—X—

See N. W. P. AND OUDH MUNICIPALITIES ACT.

1901—II—

See AGRA TENANCY ACT.

1901—III—

See UNITED PROVINCES LAND REVENUE ACT.

1903—II—

See BUNDELKHAND ALIENATION OF LAND ACT.

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

ss. 56, 86—*Cess—Rent—Rent payable partly in cash and partly in kind.* Certain tenants holding under a *gabuliat* agreed to pay as rent a fixed sum in money and also certain quantities yearly of *bhusa*, *chari*, grain and sugarcane, described in the *gabuliat* as *rasum zamindari*. *Held*, that, notwithstanding that the payments in kind were described as "*rasum zamindari*," they were nevertheless part of the rent and could be recovered by the lessor, and did not fall within the purview of s. 56 or s. 86 of the United Provinces Land Revenue Act, 1901. *Sri Ram v. Asghar Ali*, I. L. R. 35 All. 19, distinguished. *RANGI LAL v. JASSA* (1916) . I. L. R. 38 All. 286

ss. 110, 111 and 112—*Partition—Question of proprietary title.* One of the co-sharers in a village applied in a Court of Revenue for partition, whereupon another of the co-sharers raised the objection that the village had already

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*contd*

— s. 110—*concld*

Court of Revenue had jurisdiction to refer the parties to the Civil Court *RAM NARAYAN v JAGAN NATH PRASAD* (1915) **I. L. R. 38 All. 115**

— s. 111 (1) (b)—*Partition—Non appls cant required to file suit in Civil Court—Non compliance with order—Appeal* A Collector trying

with this order, but alleged that in a civil suit between the parties to the partition case it had

RAM NARAYAN v JAGAN NATH PRASAD **I. L. R. 38 All. 70**

— ss. 111, 112, 233 (k)—*Civil Procedure Code (1908), s. 11, O II, r 2—Partition—Suit for non-division of property the subject of partition* A

of the remaining one fourth biswa share came in and asked for partition of that one fourth biswa share

KALKA PRASAD v MANMOHAN LAL (1916) **I. L. R. 38 All. 302**

— s. 233, cl (k)—*Civil and Revenue Courts—Jurisdiction—Partition—Land of a third party alleged to be wrongly included in a partition formed by imperfect partition—Suit for recovery of possession in Civil Court* Where land belonging to one party was, apparently by mistake and without notice to the person who claimed to be the rightful owner thereof, included in another partition and made the subject of an imperfect partition, it was held that the person who claimed to be the owner of the land so dealt with was not debarred by s. 213 (1) of the United Provinces Land Revenue Act, 1901, from suing in the Civil Court to have his right to the land declared and to recover possession thereof *Muhammad Sadiq v Late Ram*, **I. L. R. 23 All. 291**, distinguished *Quare* Whether s. 233 (k) of the United Provinces Land Revenue Act, 1901, applies at all to an imperfect

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld.*

— s. 233—*concld*

partition *SHANSHU SINGH v DALJIT SINGH* (1916) **I. L. R. 38 All. 243**

UNLIQUIDATED DAMAGES.

See EX PARTE DECREE

I. L. R. 43 Cal. 1001

UNPROFESSIONAL CONDUCT.

1. — *Pleader as litigant*
— *Letter to Munsif threatening legal proceedings to*

a 13 (b) of the Legal Practitioners Act *In re Wallace*, **L. R. 1 P. C. 283**, *In the matter of Jogendra Narayan Bose*, **5 C. W. N. 48**, *In re a Pleader*, **18 Mad. L. J. 11** *In the matter of a first grade Pleader*, **I. L. R. 21 Mad. 17**, and *In the matter of Sarat Chandra Guha*, **4 C. W. N. 663**, referred to *In re POOTNA CHANDRA ADDY* (1915) **I. L. R. 43 Cal. 685**

2. — *Unprofessional conduct—Rules as to receiving instructions and accepting*

observed in the Subordinate Courts. In connection with the enforcement of the rules, it is always open to a Judge to refuse to hear a pleader or to

UNPROFESSIONAL CONDUCT—concl'd.

refuse to allow a pleader to act who has not accepted a *vakalatnama* in the prescribed manner. It is also the duty of the Judge to take such action as may be appropriate, in regard to infractions of the rule which escape notice at the time and are brought to light subsequently. *In the matter of JOGESH CHANDRA GUPTA* (1913).

3.

20 C. W. N. 283

Pleader—Altering.

Court's record to conceal error due to carelessness. Where a property to be sold in execution of a decree was, through the carelessness of the pleader for the decree-holder and his clerk, misdescribed in the application for execution, in the warrant of attachment and in the sale-proclamation, and after they had been presented to Court, the clerk actuated by a desire to conceal his and his master's carelessness from the decree-holder altered the descriptions and the alterations were initialled by the pleader: *Held* (ordering the pleader's suspension for three months), that to tamper with the Court's records is at all times a serious matter, and the pleader had acted without due care and caution and without that sense of responsibility which should govern the conduct of all officers of the Court in matters of such importance. *In the matter of A PLEADER* (1916). 20 C. W. N. 1069

USUFRUCTUARY MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 83 . I. L. R. 39 Mad. 579

V**VAKALATNAMA.**

Mofussil Courts—Vakalatnama, acceptance of, by pleaders—Endorsement, if necessary—Civil Procedure Code (Act V of 1908), O. III, r. 4—High Court General Rules and Circular Orders, 1910, Vol. I, Ch. XI, r. 45 (e). It is not necessary that the acceptance of a *vakalatnama* should be in writing, at the High Court General Rules and Circular Orders 1910, Vol. I, Ch. XI, r. 45(e) should be complied with by the pleader who accepts the *vakalatnama*. *Per D. CHATTERJEE J.*—An appearance or act by a pleader named in the *vakalatnama* without his accepting it in writing would, if valid and operative. The High Court rule, however, was made to be followed and is a salutary prescription for safeguarding the interests of plaintiffs and should certainly be followed in the manner indicated by the construction placed on the same in the answers to the references made to this Court. It must be complied with by the pleader who first accepts the *vakalatnama* and all subsequent acceptance must be made by endorsements made in the presence of the Court, or the *Sheristadar*, or the officer and dated, provided of course all, the

VAKALATNAMA—concl'd.

pleaders so accepting a *vakalatnama* are named in it. Courts in the mofussil must be specially careful in enforcing this rule in cases of compromise and withdrawal of cases and withdrawal of money and documents. *Per BEACHCROFT J.*—There can be an acceptance by the pleader other than in writing. But if this Court has, in the exercise of its powers, framed certain rules which must be observed by pleaders, a pleader who does not conform to those rules, ought not to be heard. *Quere*: Whether after the first endorsement by a pleader accepting a *vakalatnama*, a mere endorsement of acceptance by those appearing on the strength of the original *vakalatnama* at subsequent stages of the case is sufficient. *MAHESH CHANDRA ADDY v. PANCHU MUDALI* (1915). I. L. R. 43 Calc. 884

VALUABLE CONSIDERATION.

See LIMITATION . I. L. R. 43 Calc. 34

VALUATION.

See COURT FEES ACT (VII OF 1878), s. 7, CL. (4) . I. L. R. 39 Mad. 725
See MADRAS CIVIL COURTS ACT (III OF 1873), SS. 12, 13.

I. L. R. 39 Mad. 447

VALUATION OF APPEAL

See CIVIL PROCEDURE CODE, 1908, s. 110.
I. L. R. 38 All. 488

VALUATION OF SUIT.

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 63 . I. L. R. 38 All. 72

*Investigation as to amount of value of subject-matter of suit—Competence of Court of first instance to remit investigation of dispute to some other officer—Civil Procedure Code (Act V of 1908), O. XLV, r. 5—Practice. R 5, O. XLV of the Code of Civil Procedure does not empower the Court of first instance, to remit the investigation as to amount or value of subject-matter of suit to some other officer; it must be carried out by that Court. *HANSMAN JHA v. BAHUJI JHA* (1915) . I. L. R. 43 Calc. 225*

VATANDAR JOSHI.

Right to officiate at marriages—Yajman—Ceremony in Pancha-kalas Lingayat form—Claim for fees in respect of part of the ceremonial in Hindu form—Ceremony cannot be split up. The question raised in this appeal was whether the ceremonials observed by Lingayets in marriages are to be regarded as a whole in deciding whether or not the village Gramopadhya is entitled to perform the ceremony or whether the ceremony can be split up into parts, and if it is found that some part of the ceremonial is similar to the Brahmin ritual the Gramopadhya can insist upon payment of fees in respect of such part of the ceremonial as may have been performed by another. *Held*, that, if the ceremony performed was not a Hindu marriage ceremony as a whole, the

VATANDAR JOSHI—concl'd

Joshi or Gramopadhyas had no right to demand the fees. *RANGAPPA v VENKANBHAT* (1915)

I L R 40 Bom 112

VENDOR AND PURCHASER

See SPECIFIC PERFORMANCE

I L R 43 Calc 990

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 55 (4)

I L R 39 Mad 997

Conveyance of property by an administrator having a beneficial interest therein—No words of limitation in the agreement to convey specifying whether it was qua administrator or qua beneficial owner—Principle to be applied in ascertaining in what capacity the administrator acted. Where a person has two estates one larger and the other smaller, and purports to convey the entire property without any words or limitation

condition or limitation he must be taken to be conveying in his character as executor and not in that of one having a beneficial interest only in a fraction of the whole estate purported to be conveyed. *In re Venn & Furze's Contract* [1894] 2 Ch 101 followed. No distinction can be maintained in principle between actual conveyance and agreements to convey for the purposes of applying this general rule. *GANGARAI v SONABAI* (1914)

I L R 40 Bom 69

VENDOR'S LIEN

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 55 (4)

I L R 39 Mad 997

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 55 (4) (b)

I L R 38 All 254

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See VERIFICATION OF PLAINT

VERIFICATION OF PLAINT

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VILLAGE

change of from one district to another—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

I L R 39 Mad 949

VILLAGE MAGISTRATE

information to—

See BAILIABLE OFFENCE

I L R 39 Mad 1000

VOLUNTARY LIQUIDATION

See COMPANIES ACT (XII OF 1913) s 207

I L R 39 All 407

VYAVAHARA MAYUKHA

See HINDU LAW—MITAKSHARA.

I L R 40 Bom 621

W**WAIVER**

See CONTRACT ACT (IX OF 1872) ss 56 (2) 65

I L R 40 Bom 570

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WAJIB-UL ARZ

See PRE EMPTION

I L R 38 All 27, 260

value of—

See OUDH ESTATES ACT (I OF 1869) ss 8 10

I L R 38 All 552

WAKF

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92

I L R 40 Bom 541

See WAKF VALIDITY OF

Mutawalli—Matters connected with wakf being religious matters—Descendants of the founder—Preferential claim to mutawalli ship—No right of inheritance—Qadi under the Mahomedan law exercising functions in relation to wakfs—His equivalent in the British India an system of law—Position of the Subordinate Judge—District Judge jurisdiction of. Though a descendant of the founder of a wakf property has a preferential claim to the office of the mutawalli, he does not become mutawalli by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified. No right of inheritance attaches to a religious endowment. *Ahmed Sahimullah v Abdul Khar M Mustafa* I L R

870 *Nizam Chand v Golam Hossain* I L R 37 Calc 179, *Muhammed v Syed Ahmed* 1 Bom H C R 18 *Jamal v Jamal* I L R 1 Bom 633 *David Sha v Ismail Sha* I L R 3 Bom 72 *Baba v Nassaruddin* I L R 18 Bom 103 4 G v *Abdul Kadir* I L R 18 Bom 401 *Kudratulla v Mahan Mohan* 4 B L R 134 *Malammed v Ahmed Bhai* I L R 25 Bom 327 *Sayid Ali v Ali Jan* I L R 35 All 98 *Muhammad Abdul Majid v Ahmed Saeed* 11 All L J 673 referred to. Under the Mahomedan law that Qadi alone was competent to exercise authority in respect of wakfs who was so expressly authorised in his letters patent. There was some difference of opinion upon the question whether such express

WILL—*contd.*2. DEMONSTRATIVE LEGACY—*concl'd.*

v. Tadikonda Ramachandra Rao, I. L. R. 29 Mad. 155, *Mullins v. Smith*, 1 Drew & Sm. 201, and *In re Walford, Kenyon v. Walford*, [1912] 1 Ch. 219, referred to and followed. ADMINISTRATOR GENERAL OF BENGAL *v. A. D. CHRISTIANA* (1915).
I. L. R. 43 Cal. 201

3. PROOF.

1. ———— *Proof of execution and due attestation*—Attesting witnesses, turned hostile—Court may find execution proved from other evidence—Proof that testator saw attesting witnesses sign, and latter saw testator sign, if necessary, where will regular on its face—Presumption of due execution. The mere fact that attesting witnesses to a will have repudiated their signature does not invalidate the will, if it can be proved by evidence of a reliable character that they have given false testimony. When the evidence of the attesting witnesses is vague, doubtful or even conflicting upon some material point, the Court may take into consideration the circumstances of the case and judge from them collectively whether the requirements of the Statute were complied with; in other words, the Court may, on consideration of the other evidence or of the whole circumstances of the case, come to the conclusion that their recollection is at fault, that their evidence is of a suspicious character or that they are wilfully misleading the Court, and accordingly disregard their testimony and pronounce in favour of the will. It is not necessary under the law that affirmative evidence should be forthcoming that the testator did, as a matter of fact, see the attesting witnesses put their signatures or that the attesting witnesses did actually see the testator sign the document. It is enough if the circumstances show that their relative position was such that they might have seen the execution and the attestation respectively. Every presumption will be made in favour of due execution and attestation in the case of a will regular on the face of it and apparently duly executed. *BRAHMADAT TEWARI v. CHAUDAN BIBI* (1914). . . . 20 C. W. N. 192

2. ———— *Proof—Execution in unusual circumstances*—Will not inofficious—Witnesses such as were reasonably to be expected to be available in the circumstances, not to be disbelieved merely because their position socially inferior—Beneficiary under will recited as being testator's adopted son—Caveator, if may question adoption—Judge, if may refuse to frame an issue as to adoption, whilst admitting evidence thereon—Relevancy on the question of genuineness of will—Note of evidence to be given by witness, refusal to produce, if should prejudice party—Privilege. K, a Hindu gentleman of means and resident of a place called Sursand, went accompanied by his two wives and some of his servants and dependants to attend the bathing fair at Sonapur on 10th November 1905. Cholera having broken out at the fair, it was broken up by Government order, but K, who had been suffering

WILL—*contd.*3. PROOF—*contd.*

from dysentery and had been made nervous about the state of his health by the outbreak of cholera (it was alleged) executed the disputed will on 15th November 1905 and died at 3 A.M. of 16th November 1905. The will was proved by such of the attesting witnesses as were available and other witnesses. The genuineness of the will was challenged, *inter alia*, on the ground that the witnesses to the execution were not of a superior position. The will however appeared to be one which a Hindu gentleman in K's position might reasonably and naturally have made and the attesting witnesses were such as one would reasonably expect to be available on the occasion. *Held*, that there being nothing in the case to suggest that the will had been forged or that the witnesses who gave evidence as to the preparation and as to the due execution of the will had committed perjury, the contention that the will should not be accepted as genuine because the witnesses to its execution were not of a superior position was not sound and was contrary to the view of the law as expressed in *Choley Narain Singh v. Ratan Koer*, L. R. 22 I. A. 12, 24, and *Jagrani Koer v. Koer Durga Parshad*, L. R. 41 I. A. 80; s. c. 18 C. W. N. 521. That something more than mere suspicion is necessary in such a case to make convincing an argument based on the social position of the witnesses. One of the beneficiaries under the will was C, a boy who, the will recited, had been adopted, according to Hindu rites, by K as his son. The caveators questioned the *factum* of the adoption: *Held*, that the trial Judge was right, upon an application for probate, in declining to frame an issue as to the alleged adoption, though the matter had to be considered as bearing on the question of the genuineness of the will and the caveators were not precluded from questioning the adoption and were rightly allowed to cross-examine the propounder's witnesses on that subject and to call evidence to prove that C was not adopted. For the purposes of the propounder's brief a note had been obtained from a witness (subsequently examined at the trial) of the evidence that he could give: *Held*, that the note was privileged from production and the caveators were not entitled to see it, and the Judges should not have allowed their minds to be influenced in considering the evidence by the fact that the note was not produced in Court for the information of the caveators. *GENDA KUNWAR v. HARNANDAN SINGH* (1916).
20 C. W. N. 617

3. ———— *Proof of genuineness*—Clear and trustworthy evidence of attesting witness if to be rejected because appearance of document suspicious—Court, if in such a case, may speculate as to what would have been a proper will for the testator. Proof of the genuineness of a will depended mainly upon the testimony of a doctor who attested on the last page of the will, the signature of the deceased and who deposed that at the time the will was executed, the deceased

WILL—concl'd.

3. PROOF—*concl'd*

was perfectly capable of understanding a business transaction. The will on examination showed that the writing on the last page was inconveniently

blank pa
ously ob
if believe
believe),
the High Court was a good mark
of the genuineness of the will That it would be

distinct and trustworthy evidence of the doctor who witnessed the will. Where a will has once been made and is apparently in perfect form, and the evidence of the attesting witness is to be

WINDING UP.

See COMPANIES ACT (VI OF 1862), ss. 61
125, 151. L. L. R. 38 All. 347

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7, Sch. I, Art. 142.
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I. L. R. 39 Mad. 543**"property"—***See* CIVIL PROCEDURE CODE (ACT V OF
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I. L. R. 39 Mad. 584**"public place"—***See* MADRAS CITY POLICE ACT (III OF
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I. L. R. 43 Calc. 944**WORDS AND PHRASES—*contd.*****"unable to maintain itself"—***See* CRIMINAL PROCEDURE CODE (ACT V
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I. L. R. 39 Mad. 957**"valuable security"—***See* PENAL CODE ACT (XLV OF 1860),
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I. L. R. 39 Mad. 584**"withdrawal"—***See* CRIMINAL PROCEDURE CODE, ss. 248,
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I. L. R. 43 Calc. 944**"words which are likely or may
have a tendency, directly or in-
directly, whether by inference,
suggestion, allusion, metaphor,
implication or otherwise" [in
s. 4, (1)].***See* PRESS ACT (I OF 1910), ss. 3 (1), 4 (1),
17, 19, 20, 22.
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of accused persons condemned. DEPUTY LEGAL
REMEMBRANCER P. MATURDHARI SING (1915).
20 C. W. N. 128**Y****YAJMAN.***See* VATANDAR JOSHI.
I. L. R. 40 Bom. 112**Z****ZAMINDAR.***See* MADRAS ESTATES LAND ACT (I OF
1908), ss. 6, SUB-S. (6), 8.
I. L. R. 39 Mad. 944**ZAMINDARI.****sale of—***See* EXECUTION OF DECREE.
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THE HIGH COURT, CALCUTTA, 1915.

CHIEF JUSTICE:

The Hon'ble SIR LAWRENCE H JENKINS, Kt, K.C.L.E. (*retired Nov 14, 1915*)
 " " " JOHN GEORGE WOODROFFE, Kt (*Acting*)
 " " " LANCELOT SANDERSON, Kt, K.C.

PUISNE JUDGES.

The Hon'ble SIR JOHN C WOODROFFE
 " " " ASUTOSH MOOKERJEE, Kt, CSI
 " " " H HOLMWOOD
 " " " C W CHITTY
 " " " E E FLETCHER
 " " " S SHARFUDDIN
 " " " H R H COKE (*retired Nov 14, 1915*)
 " " " SIR HERBERT W C CARNDUFF, Kt, C.I.E. (*Deceased*)
 " " " D CHATTERJEE
 " " " N R CHATTERJEE
 " " " W TEUNON
 " " " T W RICHARDSON
 " " " A CHAUDHURI
 " " " S HASAN IMAM
 " " " C P BEACROFT
 " " " H WALMSLEY
 " " " E P CHAPMAN (*Additional*)
 " " " B K MULLICK (*Additional*)
 " " " W E GREAVES (*Additional*)
 " " " B B NEWBOULD (*Additional*)
 " " " F R ROE (*Off?*)

The Hon'ble G H B KENBICK, K.C., *Advocate General*
 " " " B C MITTER, *Standing Counsel*

THE HIGH COURT, BOMBAY, 1915.

CHIEF JUSTICE

The Hon'ble SIR BASIL SCOTT, Kt

PUISNE JUDGES.

The Hon'ble SIR S L BATCHELOR, Kt
 " " " DINESHA D DAVAR, Kt
 " " " F C O BRAMAN
 " " " SIR J J HEATON, Kt
 " " " N. C MACLEOD
 " " " L. A. SHAH
 " " " M H W HAYWARD (*Acting*)
 The Hon'ble T J STRANGMAN (*Advocate General*) (*Resigned*)
 " " " M R JARDINE (*Advocate General*)
 " " " D N BAHADURJI (*Acting*)
 Mr. G D FRENCH (*Legal Remembrancer*)

THE HIGH COURT, MADRAS, 1915.

CHIEF JUSTICE :

The Hon'ble SIR JOHN E. P. WALLIS, Kt.

PUISNE JUDGES :

The Hon'ble SIR CHITTOOR SANKARAN NAM, Kt., C.I.E.
 " " ABDUR RAHIM.
 " " SIR WILLIAM B. AYLING, Kt.
 " " F. DUPRE OLDFIELD.
 " " T. SADASIVA AYYAR, *Diwan Bahadur*
 " " C. G. SPENCER.
 " " V. M. COUTTS TROTTER.
 " " T. V. SESHAGIRI AYYAR.
 " " F. H. B. TYABJI.
 " " W. W. PHILLIPS (*Offg.*).
 " " L. G. MOORE (*Offg.*).

TEMPORARY ADDITIONAL JUDGES :

The Hon'ble J. H. BAKEWELL.
 " " C. F. NAPIER.
 " " C. V. KUMARA SWAMI SASTRIYAR, *Diwan Bahadur*.
 " " K. SRINIVASA AYYANGAR

ADVOCATE GENERAL :

The Hon'ble F. H. M. CORBET.

THE HIGH COURT, ALLAHABAD, 1915.

CHIEF JUSTICE :

The Hon'ble SIR HENRY G. RICHARDS, Kt., K.C.

PUISNE JUDGES :

The Hon'ble SIR GEORGE E. KNOX, Kt.
 " " " PRAMADACHARAN BANERJI, Kt.
 " " W. TUDBALL.
 " " E. M. DES C. CHAMIER (*On deputation*).
 " " SAHYID MUHAMMAD RAFIQ.
 " " T. C. PIGGOTT.
 " " C. H. WALSH.

THE PRIVY COUNCIL, 1915.

VISCOUNT HALDANE, *Lord Chancellor*
 LORD BUCKMASTER, *Lord Chancellor*
 EARL OF HALSBURY
 EARL LOREBURN
 LORD DUNEDIN
 LORD ATKINSON
 LORD SHAW OF DUNFERMLINE
 LORD MERSEY
 LORD MOULTON
 LORD PARKER OF WADDINGTON
 LORD SUMNER
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 SIR GEORGE FARWELL
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 SIR SAMUEL WAY, BART
 SIR SAMUEL GRIFFITH, GCMG
 SIR EDMUND BARTON, GCMG
 SIR JOHN EDGE
 SIR CHARLES FITZPATRICK, GCMG
 SIR JOSHUA WILLIAMS
 SIR JAMES ROSE INNES KCMG
 SYED AMEER ALI, CIE

And those other members of the Privy Council who are within the provisions of the Statutes 3 & 4 Will IV, c 41, 44 Vict, c 3 and 50 & 51 Vict, c 70

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| Indian Law Reports:— | | | | |
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| Bombay Series, Vol. 39 . | | 1 | High Court, Bombay, and Privy Council. | I. L. R. Bom. |
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ADMINISTRATOR-GENERAL'S ACT (II OF 1874).

— ss. 20, 52 and 54—*Grant of Letters of Administration to the Administrator-General—Vesting of the estate in him—Sale by him of lands for his commission without sanction of Court, validity of.* A grant of Letters of Administration under s. 20 of Administrator-General's Act to the Administrator-General in respect of the estate of a deceased Hindu vests the estate in the Administrator-General and enables him to dispose of immovable property without the consent of the Court. The administration cannot be treated as closed until every act necessary for its completion has been done. Hence, a sale by the Administrator-General of some immovable property of the deceased, for the purpose of realising the commission due to him under the Act, is a valid sale in the course of administration and it takes precedence over a prior sale effected by the heir of the deceased. *ALVAR CHETTY v. CHIDAMBARA MUDALI* (1914) . I. L. R. 38 Mad. 1134

— ss. 28, 34 and 35—*Civil Procedure Code (Act V of 1908), O. XX, r. 13—Suit to recover assets improperly paid by the Administrator-General—Not a suit for administration by Court—Priority of creditors—Construction of instrument of agreement—Creditor to be paid out of cheques or monies received from a third party for work done by the creditor—Charge on such cheques or monies received after Letters of Administration granted—"Specific fund," meaning of—Equitable assignment—"Payment out of a fund" and "Payment when a fund is received," difference between.* S. 28 of the Administrator-General's Act (II of 1874) directs the Administrator-General to distribute the assets and contains a provision that nothing contained in the section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively. When Probate or Letters of Administration have been granted to the Administrator-General there is no machinery for the administration of the insolvent estate of a deceased debtor under the law of insolvency. The practice in Bombay and Calcutta is the same as in Madras. O. XX, rule 13 of the Civil Procedure Code (Act V of 1908), does not apply to a suit brought by a creditor of a deceased debtor against the Administrator-General (to whom Letters of Administration had been granted) and some other creditors to recover assets alleged to have been improperly paid by the Administrator-General to such creditors in priority to the plaintiff. When an agreement contained a clause, viz., "It is agreed that you should have a lien or charge over cheques or

ADMINISTRATOR-GENERAL'S ACT (II OF 1874)—concl'd.

— ss. 28, 34, 35—concl'd.

monies received for works done with your capital," the instrument operated to create a charge on cheques or monies payable for work done after the instrument, although the cheque was not given or payment made until after letters of administration had been granted to the Administrator-General. *Collyer v. Isaacs*, 19 Ch. D. 342, and *Tailby v. Official Receiver*, 13 A. C. 523, followed. *Bhansidhar v. Sant Lal*, I. L. R. 10 All. 133, referred to. *Ex parte Nicholas In re James*, 22 Ch. D. 782, and *Ex parte Moss In re Toward*, 14 Q. B. D. 310, explained. When an instrument refers to specific funds out of which the claims of a creditor are to be satisfied, the creditor has a charge on such fund. When a creditor is to be paid "out of the fund" as distinguished from "when the assignor gets the fund," a valid equitable assignment is created provided the transaction is for value. *Fisher on Mortgage*, page 126, *White and Tudor's Leading Cases*, 8th Edition, Volume I, page 117. *Field v. Megaw*, L. R. 4 C. P. 660, distinguished. *Ramsidh Pande v. Balgobind*, I. L. R. 9 All. 158, referred to. *NAVAJEE v. THE ADMINISTRATOR-GENERAL, MADRAS* (1913) . I. L. R. 38 Mad. 500

ADMIRALTY COURT ACT, 1861 (24 VICT. C. 10).

— s. 5—

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

ADMIRALTY JURISDICTION.

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

ADMISSION IN PLEADINGS.

See EVIDENCE ACT (I OF 1872), s. 92
AND PROV. (2). I. L. R. 39 Bom. 399

ADMISSION OF EXECUTION.

See MORTGAGE. I. L. R. 37 All. 426

ADOPTION.

See AGRA TENANCY ACT (II OF 1901),
s. 22. I. L. R. 37 All. 7

See HINDU LAW—ADOPTION.

— by widow—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

— *Suit by reversioner to set aside adoption—Previous suit by adoptive mother, binding effect of—Civil Procedure Code (1908), section 11.* A Hindu widow as such brought a suit to set aside an adoption of a son made by her on the ground that she was not vested with authority from her husband to adopt. The suit was contested by the adopted son and it was decided by the Court in India, on the ground of estoppel. It was however held by the Privy Council that the adoption was valid and that the adoptive mother had authority from her husband to adopt.

ADOPTION—concl'd

After the death of the widow, the present suit was brought by an alleged reversioner to the estate of her husband for a declaration that the adoption was invalid and for possession of the estate *Held*, per BANERJI and CHAMIER, JJ (RICHARDS, CJ, dissenting) that widow represented the estate and the interest of the reversioners to her husband, and as the Privy Council had held in the previous suit that the widow had full authority to make the adoption that decision was binding on the reversioners and the present suit was not maintainable *Per* RICHARDS, CJ (*contra*) the decision in the suit of the widow was not binding on the reversioners and the present suit was maintainable *RISAL SINGH v BALWANT SINGH* (1915) I L. R. 37 All. 498

AD VALOREM COURT-FEE.

See DECLARATION, *ETC*

I L. R. 38 Mad. 922

ADVERSE ENJOYMENT.

See EASEMENTS ACT (V OF 1882), s 15

I L. R. 38 Mad. 1

ADVERSE POSSESSION.

See BHADARI AND NARWADARI TENURES ACT (BOM V OF 1862) s 3

I L. R. 39 Bom. 358

See HEREDITARY OFFICES ACT (BOM III OF 1874), s 6

I L. R. 39 Bom. 587

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 4 AND 54

I L. R. 38 Mad. 1158

— against Government—

See MUNICIPAL COUNCIL.

I L. R. 38 Mad. 6

Right acquired by

— *Expropriatory tenant Semble* That although a leasehold or an expropriatory interest can be acquired by adverse possession as against the person who is the lessor or the expropriatory tenant, yet where there never has been a lessee or an expropriatory tenant it is not possible to become such by adverse possession *BIASDEO v ULFAT RAI* (1914) I L. R. 37 All. 22

ADVERTISEMENT.

See TRADE MARK

I L. R. 37 All. 448

AOENCY.

See PAKKI ADAT TRANSACTIONS.

I L. R. 39 Bom. 1

AOENT.

See TRADING WITH ENEMY

19 C. W. N. 1239

— damages for negligence of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 6 (c)

I L. R. 38 Mad. 133

AOENT—concl'd

— trading by—

See TRADING WITH THE ENEMY

I L. R. 42 Calc. 1094

AGRA TENANCY ACT (II OF 1901).

— ss. 4, 19—*Question of proprietary title—Jurisdiction—Civil and Revenue Courts—Res Judicata* In a suit for ejectment in a Revenue Court (Assistant Collector) the defendants pleaded that the plaintiff 'brought them from their villages and established them in the property promising that they should have the property in suit. The Revenue Court found that these were the true facts, and came to the conclusion that the defendants were "rent free holders of the land in suit, which was given to them in gift by the plaintiff." The plaintiff appealed to the Commissioner, who confirmed the finding of the Assistant Collector *Held*, that the plaintiff could not reopen in a Civil Court the question of the defendants' right to the land, inasmuch as the decision of the Assistant Collector had become final, no appeal having been made to the proper Court, namely, the District Judge *Shah-ade Singh v Muhammad Uchaidi Ali Khan*, I L. R. 32 All. 8 *Bed Saran Kunwar v Bhagat Deo*, I L. R. 33 All. 453, and *Bani Pandey v Raja Kausal Ashore*, I L. R. 29 All. 169, referred to *SUNDAR KUNWAR v DINA NATH* (1913)

I L. R. 37 All. 280

— s. 20, cl. (2)—*Occupancy holding—Transfer—Mortgage executed before the Act came into force—Execution of decree* A usufructuary

Rao, 8 All. L. J. 1501, followed. Where therefore, the mortgage, not having obtained possession the judgment debtor cannot set up s. 20 of the Act as a bar to its execution *RANG LAL KUNWAR v KISHORI LAL* (1913)

I L. R. 37 All. 278

— s. 22—

1. — *Occupancy holding—Succession—Hindu law* One P, an occupancy tenant, died while the Rent Act of 1881 was in force leaving a widow and a daughter his surviving. The widow entered into possession and died after the present Tenancy Act had come into force. The present suit was brought by the brothers and nephews of P to eject the daughter and to get possession of the holding. *Held*, that the plaintiffs had no title either under s. 22 of the Agra Tenancy Act or under Hindu Law. *NATHU v. GOKALIA* (1913) I L. R. 37 All. 658

2. — *Occupancy holding—Succession—"Lineal descendant"—Hindu law—Adoption.* *Held*, that, as regards the right of succession to an occupancy holding, a Hindu who has been adopted ceases to be the lineal descendant of his natural father for the purposes of s. 22 of the Agra Tenancy Act, 1901. *Lala v. Nalor*

AGRA TENANCY ACT (II OF 1901)—*contd.*s. 22—*concl'd.*

Singh, I. L. R. 34 All. 353, followed. *Nandan Tewari v. Raj Kishore Rai*, Select Decisions, 1904, No. 5, approved. *Ali Bakhsh v. Barkat-ullah, I. L. R. 34 All. 419*, distinguished. *THAMMAN SINGH v. DAL SINGH* (1914) **I. L. R. 37 All. 7**

— s. 32—*Suit for possession of portion of holding—Suit maintainable.* All that s. 32 of the Tenancy Act provides against is the splitting up of a holding or the distribution of the rent so as to bind the land-holders. Cl. 2 does no more than enact that a suit brought for such a purpose shall not be entertained by a Civil or Revenue Court; but where a plaintiff sues for possession of a portion of a fixed rate tenancy alleging that he is owner thereof and the defendant is a trespasser, such a suit is not barred by the provisions of s. 32 of the Agra Tenancy Act, 1901. *Najibullah v. Gulsher Khan, I. L. R. 29 All. 66*, followed. *KEDAR v. DEO NARAIN* (1915) **I. L. R. 37 All. 656**

s. 95—

1. — *Scope of section—Power to fix rent not given.* It was never intended that the Court in proceedings under s. 95 of the Agra Tenancy Act, 1901, was to fix the amount of rent. Under s. 95 it was intended that the Court should ascertain what in fact was the rent payable. *RAM CHARAN LAL v. KARIM-UN-NISSA BIBI* (1914) **I. L. R. 37 All. 12**

Jurisdiction—

2. — *Civil and Revenue Courts—Res judicata—Dispute between two rival claimants to a holding.* A sued B for ejectment in a Court of Revenue, alleging that B was his sub-tenant, and obtained a decree. B then sued in the Civil Court for a declaration that he was the owner of a certain occupancy holding and for possession if he was found not to be in possession. *Held* (i) that B's suit was properly triable by a Civil Court and not by a Court of Revenue and (ii) that the previous judgment of the Court of revenue ejecting B could not operate as *res judicata*. Neither was the suit barred by s. 95 of the Agra Tenancy Act, 1901. That section deals with questions arising between landlord and tenant, and not between rival claimants to a tenancy. *Jagannath v. Ajudhia Singh, I. L. R. 35 All. 14*, followed. *Diwan Singh v. Bandhera, 12 All. L. J.*, overruled. *KANHAI RAM v. DURGA PRASAD* (1915) **I. L. R. 37 All. 223**

— ss. 95, 167—*Jurisdiction—Civil and Revenue Courts—Suit for ejectment of tenant—Decision of incidental question by Revenue Court—Suit in Civil Court with the object of defeating the Revenue Court's decree—Res judicata.* In a suit for ejectment of a tenant filed in a Court of Revenue the defendants pleaded that they held under an unexpired lease granted by the plaintiffs' *karinda*. The plaintiffs replied that the *karinda* had no authority to grant the lease. The Court of Revenue decided the issue thus raised in favour of the defendants and dismissed the suit. The

AGRA TENANCY ACT—(II OF 1901)—*contd.*s. 95—*concl'd.*

plaintiffs then sued in a Civil Court asking for a declaration that the lease was without authority and was not binding on them. *Held*, that the suit would not lie. The Court of Revenue, in a suit the main object of which was the ejectment of the defendants, had jurisdiction to decide the question of the validity of the lease, and the suit was barred by the operation of ss. 95 and 167 of the Agra Tenancy Act, 1901. *Gomti Kunwar v. Gudri, I. L. R. 25 All. 138*, distinguished. *Rai Krishn Chand v. Mahadeo Singh, All. Weekly Notes, 1901, 49.* *RAM SINGH v. GERRAJ SINGH* (1914) **I. L. R. 37 All. 41**

— s. 97—*Attestation of instrument by Revenue Court or Officer—Registration Act (XVI of 1908), s. 47.* *Held*, that where a lease has been attested by a Revenue Court or Officer under s. 97 of the Agra Tenancy Act, 1901, such attestation, in the same way as registration under the Indian Registration Act, relates back to the date of execution of the document. *BANWARI LAL v. KHUBI RAM* (1914) **I. L. R. 37 All. 59**

— s. 164—*Suit by co-sharer against lambardar for share of profits—Burden of proof.* In a suit by a co-sharer against a lambardar for his share of profits under s. 164 of the Tenancy Act, if the co-sharer gives general evidence to show that the rents are greatly in arrear, that the tenants are solvent and that there are no special circumstances why the rents should not have been collected, the *onus* is shifted on to the defendant of showing that for some reason, not connected with his own negligence or misconduct, he was unable to collect the rents. *Mithan Lal v. Mizaaji Lal, 10 All. L. J. 529*, followed. *SHIVA CHANDAR SINGH v. RAM CHANDAR SINGH* (1915) **I. L. R. 37 All. 595**

— s. 167—*Jurisdiction—Civil and Revenue Courts—"Matter in respect of which a suit might have been brought" in the Revenue Courts.* The owners of certain zamindari property first mortgaged the property and then executed a perpetual lease of some land appertaining thereto. The mortgagees brought the zamindari to sale, and it was purchased by a stranger. The auction purchaser then sued the lessees in the Civil Court for recovery of possession of the land held by them. The lessees were directed to institute a suit in the Revenue Court to determine the question whether they were or were not tenants of the plaintiff. In this suit the auction purchaser admitted the existence of a tenancy, but pleaded that the precise nature of the tenancy, and in particular the validity of the perpetual lease was not a matter for determination in that suit. A decree was passed by the Revenue Court to the effect that the lessees were tenants of the plaintiff auction-purchaser. Subsequently the plaintiff amended his plaint by asking for a simple declaration that the perpetual lease was not binding on him. *Held*, that the suit so framed was barred by s. 167 of the

AGRA TENANCY ACT (II OF 1901)—*concl.*s. 167—*concl.*Agra
have
Court.

perpetual lease would have to be determined
Ram Singh v Gurray Singh, 1 L R 37 All 41,
 followed *SHER KHAN v DERI PRASAD* (1915)
 1 L R. 37 All. 254

s. 197—

See *BENGAL, N W P AND ASSAM CIVIL
 COURTS ACT (XII OF 1887)*, s 22 (3)
 1 L R. 37 All 232

s. 199—*Suit for ejectment—Plea
 that defendant was holding under an unexpired
 lease—Question of proprietary title* In a suit for
 ejectment in a Court of Revenue, the defendant
 pleaded that he was entitled to remain in possession
 under a certain *zari pesghi* lease the term of which
 had not expired. The Court of Revenue
 treated the question thus raised as falling under
 s 199 of the Agra Tenancy Act, 1901, and
 directed the defendant to file a suit in the Civil
 Court within three months to vindicate his right.
Held, that s 199 was not applicable and the
 defendant was not bound to file his suit in the
 Civil Court within three months from the date
 of the order of the Court of Revenue. *SURAJ
 MAL v HIRA KUNWAR* (1914)
 1 L R. 37 All. 94

AGREEMENT.

See *ADMINISTRATOR GENERAL'S ACT (II
 OF 1874)*, ss 28 34 AND 35
 1 L R. 38 Mad. 500

See *HINDU LAW—ADOPTION*
 1 L R. 39 Bom. 528

See *LIMITATION*
 1 L R. 38 Mad. 101

appointing creditor agent for sale of
 debtor's goods—

See *PROVINCIAL INSOLVENCY ACT (III OF
 1907)*, s 31 1 L R. 37 All. 383

AGREEMENT IN RESTRAINT OF TRADE.

See *CONTRACT ACT (II OF 1872)*, s 27
 1 L R. 37 All. 212

AGREEMENT TO RECONVEY.

See *TRANSFER OF PROPERTY ACT (IV OF
 1882)*, s 54 1 L R. 39 Bom. 472

AGRICULTURAL LANDS.

See *UNDER RAIYATI HOLDING*
 1 L R. 42 Calc. 751

See *WATERFLOW*
 1 L R. 38 Mad. 149

AGRICULTURAL TRIBE.

See *BUNDELKHAND ALIENATION ACT (II
 OF 1903)*, s 3. 1 L R. 37 All. 682

AGRICULTURIST.

See *CIVIL PROCEDURE CODE (ACT V OF
 1908)*, ss 2 AND 97
 1 L R. 39 Bom. 422

**AHMEDABAD TALUQDARS ACT (BOM. VI
 OF 1862) I**

See *KASBATIS* 1 L R. 39 Bom. 025

ALIENATION.

See *ALIENATION BY WIDOW*
 See *CIVIL PROCEDURE CODE (1882)*
 1 L R. 37 All. 542

See *HINDU LAW—ALIENATION*
 See *HINDU LAW—WILL*
 1 L R. 42 Calc. 561

by de facto guardian—

See *HINDU LAW—ADOPTION*
 1 L R. 38 Mad. 1105

by guardian—

See *LIMITATION ACT (IV OF 1877)*,
 ss 7 AND 8 SCH II, ART 41
 1 L R. 38 Mad. 118

by widow—

See *HINDU LAW—ALIENATION*
 1 L R. 42 Calc. 876

See *HINDU LAW—ALIENATION*
 1 L R. 37 All. 369

See *PATRY COUNCIL*
 1 L R. 38 Mad. 509

of mutt properties—

See *MUTT, HEAD OF*
 1 L R. 38 Mad. 250

of writ—

See *WRIT* 1 L R. 39 Bom. 28

restraint on—

See *TRANSFER OF PROPERTY ACT (IV OF
 1882)*, s 10 1 L R. 38 Mad. 867

ALIENEE.

See *CIVIL PROCEDURE CODE (ACT V OF
 1908)*, O XXI R 63
 1 L R. 38 Mad. 535

from trustee—

See *CIVIL PROCEDURE CODE (ACT V OF
 1908)*, ss 92 AND 93
 1 L R. 38 Mad. 1064

not a tenant in common—

See *HINDU LAW—JOINT FAMILY*
 1 L R. 38 Mad. 684

ALLUVION.

See *FISHERY* 1 L R. 42 Calc. 439

ALTERATION.

See *DEED* 1 L R. 38 Mad. 746

AMBIGUITY.

See HINDU LAW—RELIGIOUS ENDOWMENT . . . I. L. R. 42 Calc. 536

AMENDED LETTERS PATENT.

— cls. 11 and 28—

See HIGH COURTS ACT (21 & 25 VICT. C. 101), ss. 2, 9 AND 13.
I. L. R. 39 Bom. 604

AMENDMENT.

— of decree—

See DECREE-HOLDER.
I. L. R. 38 Mad. 677

ANCESTRAL MOVEABLE PROPERTY.

See HINDU LAW—WILL.
I. L. R. 39 Bom. 593

ANCESTRAL PROPERTY.

See JOINT HINDU FAMILY.
I. L. R. 39 Bom. 245

ANCIENT LIGHT.

— infringement of—

See EASEMENT . I. L. R. 42 Calc. 46

ANNUITY.

See CHARGE . I. L. R. 37 All. 72

APPEAL.

See AWARD . I. L. R. 38 Mad. 256

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), ss. 21, 22.
I. L. R. 37 ALL. 76

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 24 . I. L. R. 38 Mad. 25

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 97.
I. L. R. 39 Bom. 339, 421

See CIVIL PROCEDURE CODE (1908), s. 105.
I. L. R. 37 All. 456

See CIVIL PROCEDURE CODE (1908), O. IX, r. 13 . . . I. L. R. 37 All. 208

See CIVIL PROCEDURE CODE (1908), O. XLIII, r. 1 . I. L. R. 37 All. 272

See CONTEMPT OF COURT.
I. L. R. 42 Calc. 1169

See CRIMINAL PROCEDURE CODE, s. 193.
I. L. R. 37 All. 286

See CRIMINAL PROCEDURE CODE, s. 408 (b).
I. L. R. 37 All. 471

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), ss. 3 (w), 10, 53.
I. L. R. 39 Bom. 165

See LIMITATION ACT (IX OF 1908), s. 5.
I. L. R. 37 All. 267

See MORTGAGE . I. L. R. 38 Mad. 18

See PENSIONS ACT (XXIII OF 1871), s. 6.
I. L. R. 39 Bom. 352

APPEAL—contd.

See PROVINCIAL INSOLVENCY ACT (III OF 1907) . . . I. L. R. 38 Mad. 15

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 35.
I. L. R. 37 All. 450

See RATEABLE DISTRIBUTION.
I. L. R. 42 Calc. 1

See REVIEW . I. L. R. 42 Calc. 830

— in criminal cases—

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 42 Calc. 739

— revision of—

See APPEAL TO PRIVY COUNCIL.
I. L. R. 38 Mad. 406

— transfer of—

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), s. 22 (3).
I. L. R. 37 All. 232

1. ——— Additional Evidence—Civil Procedure Code (Act V of 1908) O. XLI, r. 27; O. XLVII, r. 1—Jurisdiction of Appellate Court to admit additional evidence—Application to admit additional evidence before the hearing of the appeal, if it can be entertained. Where in an appeal an application was made before the hearing of the appeal for the admission of additional evidence: Held, that such an application was not warranted by the terms of O. XLI, r. 27, and the Appellate Court had no jurisdiction to entertain it. O. XLI, r. 27, does not authorise an Appellate Court to admit fresh evidence, documentary or oral, and whether or not it was in existence at the time of the judgment of the lower Court or at the time the appeal was preferred, unless the Appellate Court after examining the evidence on the record comes to the conclusion that it requires the additional evidence in order to enable it to pronounce judgment, namely, that there is a defect on the evidence on the record. An application to admit fresh evidence discovered out of Court by the parties comes under O. XLVII, r. 1, and not under O. XLI, r. 27. *Kessowji Issur v. Great Indian Peninsula Railway Co.*, I. L. R. 31 Bom. 381; *L. R. 34 I. A. 115*, referred to. *GARDEN REACH SPINNING AND MANUFACTURING CO. v. SECRETARY OF STATE FOR INDIA* (1914) . . . I. L. R. 42 Calc. 675.

2. ——— Criminal case—Practice—Duty of Appellate Court in dealing with the evidence on appeal—Proper standpoint—Conviction not to be upheld unless guilt beyond reasonable doubt affirmatively established—Criminal Procedure Code (Act V of 1898), s. 423. In an appeal from a conviction it is for the Appellate Court, as it is for the first Court, to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the appellant has been established beyond all reasonable doubt. To hold, that, unless reasonable ground is given to the Appellate Court for differing from the lower Court, the Appellate Court must accept its findings of fact, is to approach

APPEAL—contd

the case from a wrong standpoint. **KANCHAN MALLIK v EMPEROR (1914)**

I. L. R. 42 Calc. 374

3. ————— *Letters Patent*

1865, s

on Ori

—Civ.

r 2 An order made by the Court under the Original Side under O XXVII, r 2 of the Code of Civil Procedure, directing a defendant to give security as a term on which leave to defend should be given, is not a "Judgment" within the meaning of s 15 of the Letters Patent and is not appealable. *Justices of the Peace for Calcutta v Oriental Gas Company*, 8 B L R 433, followed. *Sonhai v Ahmedbhai Habibkhai*, 9 Bom H C 398, referred to. **SUKHLAL CHUNDERMULL v EASTERN BANK, LD (1915)**

I. L. R. 42 Calc 735

4. ————— *Practice—Filing of certified copy of decree appealed from after the prescribed period of limitation without leave of the Court,*

copy of the decrees appealed from was filed in the High Court after the prescribed period of limitation without leave of the Court in an analogous appeal, and where the main appeal had already been dismissed at the preliminary hearing under

was filed. **ABDUL HAKIM CHOWDHURI v HEM CHANDRA DAS (1914)**

I. L. R. 42 Calc. 433

————— *Suit to wind up*

after dissolution of partnership. In a suit to wind up a partnership

APPEAL—contd

under s 97 of the Civil Procedure Code, 1908,

firm in his hands without any settlement or account, and applies them in continuing the business for his own benefit, he may be ordered to account for such assets with interest thereon, apart from fraud or misconduct in the nature of fraud. **ABDUL MUSAJI SALEJI v HASIMU EBRAHIM SALEJI (1915)**

I. L. R. 42 Calc. 914

APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (1908), s

190 (c) **I. L. R. 37 ALL 129**

See LEAVE TO APPEAL TO PRIVY COUNCIL.

as plaintiffs in present joint reversionary suit—Civ.

and invalid under the Hindu Law, and for a declaration that it did not affect his interest in the ancestral estate of one of whom he claimed to be the nearest reversionary heir. The suit was dismissed by both Courts in India, and the appellant filed an appeal to His Majesty in Council, pending which he died. In an application by his grandson as the sole surviving member of his grandfather's family, and also on his death the next

APPEAL TO PRIVY COUNCIL—concl'd.

reversionary heir to the estate of V for an order that his name be substituted on the record for that of the appellant, and that the appeal be revived: *Held*, that the petitioner was entitled to the order asked for under O. I. r. 1 of the Civil Procedure Code (Act V of 1908) which declares the persons who may be jointed in one suit as plaintiffs. A suit to set aside an adoption is brought by the presumptive reversioner in a representative capacity and on behalf of all the reversioners. The act complained of is to their common detriment, just as the relief sought for is for their common benefit. Under the above rule the contingent reversioner may be joined as plaintiff in the presumptive reversioner's suit, and, if so, it follows that on his death the "next presumable reversioner" is entitled to continue the suit begun by him. The two kinds of suits which the Indian law permits to be brought in the life-time of a female owner by reversioners for a declaration that an adoption made by her is invalid, or an alienation effected by her is not binding against the inheritance [see articles 118 and 125 of schedule I of the Limitation Act (IX of 1908)], although they differ in character, will be found to be the same in both instances as regards the position of the plaintiffs so far as the point for decision is concerned; and the test of *res judicata* is irrelevant to the inquiry whether the contingent reversioner is entitled to continue the suit commenced by the presumptive reversioner. It is the common injury to the reversioners which entitles them to sue, and the question is whether the "right to sue survives" apart from any consideration whether or not the next presumable heir is the "legal representative" of the deceased presumptive reversioner. VENKATANARAYANA PILLAI v. SUBBAMMAL (1915)

I. L. R. 38 Mad. 406

2. *maintainability of—Civil Procedure Code (Act V of 1908), s. 109—Orders remanding, not final orders so as to be appealable to Privy Council—Civil Procedure Code (Act V of 1908), s. 105.* Orders of the High Court reversing on appeal two decisions of the lower Court, and remanding the cases for trial, either on the ground that the lower Court was wrong in dismissing the suit for insufficiency of the pleadings, and the other on the ground that the lower Court was wrong in dismissing the suit on the plea of bar contained in s. 43 of the old Civil Procedure Code, are purely preliminary or interlocutory orders, which do not decide the respective rights of the parties, and are not final orders within the meaning of s. 109, Civil Procedure Code, so as to be capable of being appealed against to the Privy Council. *Tirunaryana v. Gopalasami*, **I. L. R. 13 Mad. 349**, followed. *Saiyid Muzhar Hossein v. Bodha Bibi*, **I. L. R. 17 All. 112**, applied. *Forbes v. Ameeroonissa Begum*, **10 Moo. I. A. 340, 359**, referred to. S. 105, Civil Procedure Code, does not apply to appeals to His Majesty in Council. VENKATARAMA ROW v. NARASIMHA RAO (1913)

I. L. R. 38 Mad. 509

APPEARANCE.

_____ bond for—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 90, 501 AND 507.

I. L. R. 38 Mad. 1088

APPELLATE COURT.

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 1 . **I. L. R. 37 All. 326**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 27, CL. (b).

I. L. R. 38 Mad. 414

_____ jurisdiction of—

See ADDITIONAL EVIDENCE.

I. L. R. 42 Calc. 675

_____ power of—

See COSTS . **I. L. R. 42 Calc. 451**

See CRIMINAL PROCEDURE CODE, s. 195, CL. (6) . **I. L. R. 37 All. 439**

Discretion of Appellate Court in the consideration of evidence—Interference with findings of fact of Judge who sees and hears the witnesses, rule as to—Pronouncement of Trial Judge as to credibility of witnesses not to be set aside on a mere calculation of probabilities by Court of Appeal—Relevancy of cross-examination to credit—Trial Judge's opinion on evidence upheld. Whilst it is doubtless true that on appeal the whole case, including the facts, is within the jurisdiction of the Appellate Court, it is, generally speaking, undesirable to interfere with the findings of fact of the Trial Judge who sees and hears the witnesses, and has the opportunity of noting their demeanour, especially in cases where the issue is simple, and depends on the credit which attaches to one or other of conflicting witnesses. Nor should the pronouncement of the Trial Judge with respect to their credibility be put aside on a mere calculation of probabilities by the Court of Appeal. In making these observations, their Lordships said they had no desire to restrict the discretion of the Appellate Courts in India in the consideration of evidence. They only wished to point out that where the issue is simple and straightforward, and the only question is which set of witnesses is to be believed, the verdict of a Judge trying the case should not be lightly disregarded. Cross-examination to credit is necessarily irrelevant to any issue in the action; its relevancy consists in being addressed to the credit or discredit of the witness in the box so as to show that his evidence for or against the relevant issue is untrustworthy. "It is most relevant in a case," their Lordships said, "like the present where everything depends on the Judge's belief or disbelief in the witness's story: and to excuse him and actually accept his story on the ground that he was uncomfortable when he was shown to be a fraudulent falsifier of accounts is to adopt a course which their Lordships cannot follow." On the evidence in the case their Lordships reversed the decision of the Appellate Court and upheld that of the Trial Judge. BOMBAY

APPELLATE COURT—*concl.*

COTTON MANUFACTURING COMPANY v. MOTILAL SHIVLAL (1915) . . . I. L. R. 39 Bom. 368

APPELLATE DECREE.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192 . . . I. L. R. 38 Mad. 655

APPLICATION FOR LEAVE TO APPEAL.

See LEAVE TO APPEAL TO PRIVY COUNCIL
I. L. R. 42 Calc. 35

APPOINTMENT.

— power of—

See HINDU LAW—WILL
I. L. R. 42 Calc. 561

See LESSOR AND LESSEE
I. L. R. 36 Mad. 66

APPROPRIATION OF PAYMENTS.

See CONTRACT ACT (IX OF 1872), ss
59—61 . . . I. L. R. 37 All. 649

APPROVER.

See CRIMINAL PROCEDURE CODE, s 337.
19 C. W. N. 179, 235

See PARDON . . . I. L. R. 42 Calc. 856

ARBITRATION.

See CIVIL PROCEDURE CODE (1908), s 103
I. L. R. 37 All. 456

See COMPANIES ACT (VI OF 1882), ss 70,
96 AND 123 . . . I. L. R. 37 All. 273

1. ————— Bengal Chamber
of Commerce, arbitration by—Arbitration Act (IX of 1908)

I. L. R. 42 Calc. 1140

Award — Private
Order of Court to file award—

appeal against an order directing to be made by arbitrators without the intervention of

ARBITRATION—*cont.*

the Court is not lost as soon as a decree is drawn up in accordance with the judgment pronounced on the basis of the award. The order does not merge in the decree. It is competent to a Court setting

also have such power in relation to the subject-matter of the submission as will enable them to carry into effect any order which could be legally and properly laid upon them by the award. Where a party's capacity to contract is restricted, the power of making a submission is in the same man-

may be validly referred to arbitrators. But they cannot add to, or alter, the terms of the will. A

19 C. W. N. 949

3. ————— Order of reference authorising arbitrator to extend time made by consent of parties—Arbitrator extending time after the period originally fixed by Court had expired—Arbitrator after such time, if *functus officio*—Award submitted within such extended time, if must be set aside—Arbitrator's interest in subject matter in suit, when insignificant and unknown to him, if would intai-

submission from time to time by endorsement in the office copy of the order: *Held*, that when the Court had made the order by consent of the parties, there could be no objection to the functions of the Court with regard to the enlargement of time being delegated to the arbitrator if the parties so desired. But the arbitrator can only extend the time in such cases, before the time originally fixed for making the award had expired. If he did not

expired, the award must be set aside, although it was submitted within the time so extended by the arbitrator. If an arbitrator, unknown to one of the

ARBITRATION—concl'd.

ties, has a personal interest in the subject-matter of the award, it would be improper that he should act as arbitrator. If, however, his interest is insignificant and unknown to himself so that it is possible that it could have influenced his award in any way, the Court would not be disposed to set aside the award. *CO-OPERATIVE HINDUSTHAN BANK, LD. v. BHOLA NATH BOROOAH* (1914)

19 C. W. N. 165

4. *Private award in excess of reference and contrary to law on one point, valid as to rest—Invalid portion separable from award—Court, if may accept valid portion and pass decree on it—Award not enforceable summarily as operative as contract.* Where the matter has been referred to arbitration without the intervention of the Court, under para. 21 of Sch. II of the Civil Procedure Code, the Court cannot proceed to set aside the award when any of the grounds mentioned in paras. 14 and 15 of the same Schedule is proved. Even when the portion of the award open to exception is separable from the rest, the Court cannot proceed to give effect to the portion which is valid as a summary proceeding under para. 21 of Sch. II of the Civil Procedure Code. The mere fact, however, that the award cannot be filed will not affect the validity of this portion of the award as a contract between the parties. A mistake of law on a point specifically referred to the arbitrators will not vitiate their award, but a decision on a question of succession not referred to them and entirely contrary to law cannot be accepted by the Court. *DINABANDHU JANA v. CHINTAMONI CHAKRA* (1914)

19 C. W. N. 476

ARBITRATION ACT (IX OF 1899).

s. 14—

See *ARBITRATION*.

I. L. R. 42 Calc. 1140

CHAKA.

office of, alienation of—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)*, O. XXIII, r. 3.

I. L. R. 38 Mad. 850

MS.

joint possession of—

See *MISJOINDER OF CHARGES*.

I. L. R. 42 Calc. 1153

MS ACT (XI OF 1878).

ss. 4, 5, 14, 19(a), (f), 20—

See *MISJOINDER OF CHARGES*.

I. L. R. 42 Calc. 1153

REST OF SHIP.

Trespass—Absence of cause of action—Admiralty jurisdiction—Letters Patent, 1865, cl. 32—Letters Patent, 1862, cl. 26—Charter of the Supreme Court, 1774, cl. 26—Admiralty Court Act, 1840 (3 & 4 Vict. c. 65)—Admiralty Court Act, 1861 (24 Vict. c. 10), s. 5—Colonial Courts of Admiralty Act, 1890 (53 & 54

ARREST OF SHIP—cont'd.

Vict. c. 27), ss. 2 (3) (a), 35—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (2)—Maritime necessities—Action in rem—Wrongful seizure—Limitation Act (IX of 1908), Sch. I, Arts. 29, 36, 49—Pleadings. On the 4th June 1910, the respondent company instituted a suit *in rem* against the *Clan Mackintosh* in this Court as a Colonial Court of Admiralty for an amount alleged to be due to them for maritime necessities, and obtained a warrant of arrest. The ship was arrested on the same day, and remained under arrest until her release on the 31st January 1912, the action having been dismissed two days earlier on the ground of absence of jurisdiction. The owners of the ship were the appellant company, who had their office in Burma. On the 14th June 1912, the appellant company instituted the present suit in the ordinary original civil jurisdiction of this Court against the respondent company for the wrongful arrest of the ship. The suit as framed was based on malice or its equivalent, but at the hearing the appellant company proceeded on the footing of the suit being one for mere trespass. *Held*, that in the absence of proof of malice or its equivalent, a suit for simple trespass will not lie for the arrest of a ship. *The Walter D. Waller*, [1893] P. 202, *Xenos v. Aldersley*, *The Evangelismos*, 12 Moo. P. C. 352, and *The Strathnaver*, L. R. 1 A. C. 58, referred to. The arrestment of the ship was a judicial act of the Court, and an ordinary step in an action *in rem*. Under the arrest, the custody and possession was with the Marshal as an officer of the Court and could not be regarded as a detention by the respondent company. The damage, if any, suffered from the continuance of the officer's custody, and possession was due not to the default of the respondent company but to the law's delay. *Peruvian Guano Co. v. Dreyfus*, [1892] A. C. 166, followed. The foundation of the Admiralty jurisdiction of the High Court, more especially in respect of maritime necessities discussed. *The "Two Ellens"*, L. R. 4 P. C. 161, *The Henrich Bjorn*, L. R. 11 A. C. 270, *Murray v. Longford*, 1 Fulton 95, *The Asia*, 5 Bom. H. C. (O. C.) 64, *The Portugal*, 6 B. L. R. 323, *Bardot v. The Augusta*, 10 Bom. H. C. 110, referred to. Assuming that the High Court in its Admiralty jurisdiction did not acquire jurisdiction over maritime necessities by any previous enactment, such jurisdiction would now rest on the Colonial Courts of Admiralty Act, 1890, which vests in it the powers described in s. 5 of the Admiralty Act, 1861. To oust the jurisdiction of this Court under s. 5, it is not enough that the owners of the ship should be in fact domiciled in India or Burma; this domicile has to be proved to the satisfaction of the Court. *Ex parte Michael*, L. R. 7 Q. B. 658, followed. Inasmuch as such proof was not produced before the Court, when the order for arrest was made, the order for arrest cannot be treated as *coram non judice* or a nullity. Assuming that an action would lie in the absence of proof of malice or its equivalent, the action would be for wrongful seizure under legal process and would be barred by Art. 29 of the Limitation Act. It is imperative under O. VII, r. 1 (e) of the

ARREST OF SHIP—concl'd.

Code of Civil Procedure that a plaint should contain "the facts constituting the cause of action and when it arose" *MADRAS STEAM NAVIGATION Co., Ltd v SHALIMAR WORKS, Ltd* (1914)

I. L. R. 42 Calc. 85

ASSAM LAND AND REVENUE REGULATION (II OF 1889).

— s 154, if bars suit for declaration of title and possession by co sharer S 104 of the Assam Land and Revenue Regulation which provides that no Civil Court shall exercise jurisdiction in the distribution of land or allotment of revenue on partition is no bar to an unrecorded co sharer, who was not allowed to intervene in part

sion, when the partition proceedings before the Revenue authorities had not yet been completed *HABIRAM DAS v HEM NATH SARMA* (1915)

19 C. W. N. 1068

ASSAULT.

See CRIMINAL PROCEDURE CODE, ss 345 AND 439 I. L. R. 37 All. 419

See MISJOINDER I. L. R. 42 Calc. 760

See PENAL CODE (ACT XLV OF 1860), ss 332, 323 I. L. R. 37 All. 353

ASSESSMENT.

See CHAUKIDARI CHAKRAN LANDS I. L. R. 42 Calc. 710

See PENAL ASSESSMENT

ASSETS.

See ADMINISTRATOR GENERAL'S ACT (II OF 1874), ss 28, 34, 35

I. L. R. 38 Mad. 500

ASSIGNEE.

See ASSIGNEE OF A MONEY DECREE OF THE ORIGINAL COURT I. L. R. 38 Mad. 38

— of promissory note—

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 130 AND 134

I. L. R. 38 Mad. 297

— right of, to apportionment—

See LESSOR AND LESSEE

I. L. R. 38 Mad. 86

ASSIGNEE OF A MONEY-DECREE OF THE ORIGINAL COURT.

— Decree reversed in appeal—Assignee not a party to the appeal—Money realised by assignee in execution—Application by judgment debtor for restitution—Objection by assignee to application—Suit by judgment debtor against

money decree has realised the decretal amount

ASSIGNEE OF A MONEY-DECREE OF THE ORIGINAL COURT—concl'd

in execution, is entitled to recover it back from him when the decree is afterwards reversed in appeal even if the assignee of the original decree was not brought on the record in the appeal Neither the

fraud and collusion between the judgment debtor and the original decree holder, it is possible that such a plea if made and proved would be a sufficient answer to a suit by the judgment debtor against the assignee of the decree Money obtained under an invalid process of Court must be treated as money had and received to the use of the person from whom it was realised A suit for restitution by the judgment-debtor was maintainable, where he had sought his remedy for restitution by an application made to the Court which executed the decree and it was on the objection of the defendant (assignee of the decree) that he was driven to institute the suit, the defendant cannot now be heard to say that the procedure to which he himself successfully objected was the proper procedure. *Setlappa Goundan v Mulhia Goundan*, I L R 31

(1912) . I. L. R. 38 Mad. 38

ASSIGNMENT.

See DEBT I. L. R. 42 Calc. 849

See EQUITABLE ASSIGNMENT

See TRADE MARK I. L. R. 42 Calc. 282

— by lessee—

See LESSOR AND LESSEE. I. L. R. 38 Mad. 86

— founded on tort—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 6 (e) I. L. R. 38 Mad. 136

ASSISTANT COLLECTOR.

— jurisdiction of—

See CIVIL PROCEDURE CODE (1908), ss. 63 AND 70, SCH. III I. L. R. 37 All. 334

ASSISTANT JUDGE.

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), s. 16 I. L. R. 37 All. 136

ASSISTANT SESSIONS JUDGE.

See CRIMINAL PROCEDURE CODE, s. 40 (b) I. L. R. 37 All. 471

ATTACHMENT.

See ATTACHMENT OF DEBT

BENAMI TRANSACTION.

Hindu with wives and a Muhammadan mistress—Purchase with his own funds in name of mistress and registration of deed in her name—Property treated as his own, and no possession or use of it by mistress—Landlord and tenant—Estoppel as to denial of title by tenant—Evidence Act (I of 1872), s. 116—No inference against litigant as to contents of documents he considers irrelevant—Omission of opposing litigant to put them in evidence in proper way. A Hindu taluqdar who had two wives and a Muhammadan mistress and had already made substantial provision for the latter, purchased a house with his own money in the name of the mistress, and registered the deed also in her name. He treated the house, however, as his own during his life-time, living in it, paying for repairs and taxes, and receiving rent for it when let, as did his senior widow after his death; and the mistress had no possession or use of the house. In a suit by the senior widow to eject, after due notice to quit, a tenant to whom she had let the house, whose defence was a denial of the plaintiff's title, and an assertion that he held under the Muhammadan mistress who claimed title under the deed of sale in her name of which she had obtained possession. *Held* (reversing the decision of the High Court and restoring that of the Subordinate Judge), that on the evidence in, and under the circumstances of, the case the deed of sale was, and had remained throughout, a *benami* transaction. The general rule in India, in the absence of all other relevant circumstances, laid down in *Dhurm Das Pandey v. Shama Soondri Dibiah*, 3 Moo. I. A. 229, that "the criterion in these cases is to consider from what source the money comes with which the purchase money is paid" followed. It is open to a litigant to refrain from producing any documents which he considers irrelevant; and if the opposing litigant is dissatisfied, it is for him to apply for an affidavit of documents and he can so obtain inspection and production of all that appear to him in such affidavit to be relevant and proper. If he fails to do so, neither he, nor the Court at his suggestion, is entitled to draw any inference as to the contents of any such documents. It is for the litigant who desires to rely in the contents of documents to put them in evidence in the usual and proper way; if he fails to do so, no inference in his favour can be drawn as to the contents of them. A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. *BILAS KUNWAR v. DESRAJ RANJIT SINGH* (1915)

I. L. R. 37 All. 557

BENAMIDAR.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 89. I. L. R. 37 All. 414

1. ———— *Right of suit. Held*, on suit for sale on a mortgage, that the facts that the mortgagee named in the bond is only a *benamidar* and that the real owner of the bond is

BENAMIDAR—conclld.

known to the Court are no bar to the maintenance of the suit by the person named in the bond as mortgagee. *Yad Ram v. Umrao Singh*, I. L. R. 21 All. 380, referred to. *PARMESHVAR DAT v. ANARDAN DAT* (1914). I. L. R. 37 All. 113

2. ———— The view taken in *Ram Behari Sarkar v. Surendra Nath Ghose*, 19 C. L. J. 34, that a *benamidar* defendant in a mortgage suit represents the interests of the persons beneficially entitled, approved. *KANAI LAL JALAN v. RASIK LAL SADHUKHAN* (1914)

19 C. W. N. 361

BENCH OF MAGISTRATES.

See MAGISTRATES, BENCH OF.

BENGAL ACTS.

——— 1865—VIII.

See RENT RECOVERY ACT.

——— 1870—VI.

See VILLAGE CHAUKIDARI ACT.

——— 1875—V.

See BENGAL SURVEY ACT.

——— 1876—VI.

See CHOTA NAGPUR ENCUMBERED ESTATES ACT.

——— 1879—I.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT.

——— 1882—II.

See EMBANKMENT ACT.

——— 1895—I.

See PUBLIC DEMANDS RECOVERY ACT.

——— 1897—V.

See ESTATES PARTITION ACT.

——— 1899—III.

See CALCUTTA MUNICIPAL ACT.

——— 1908—VI.

See CHOTA NAGPUR TENANCY ACT.

——— 1914—VI.

See BENGAL MEDICAL ACT.

BENGAL CHAMBER OF COMMERCE.

See ARBITRATION.

I. L. R. 42 Calc. 1140

BENGAL MEDICAL ACT (BENG. VI OF 1914).

——— s. 27—Rules framed under the Act by Local Government, if *ultra vires*—Specific Relief Act (I of 1877), s. 15—Mandamus—Omission of qualified candidate's name from Election Roll—Mistake of Returning Officer—Jurisdiction of High Court to interfere. The petitioner was a Licentiate in Medicine and Surgery of the University of Calcutta and as such was admittedly entitled to be registered under s. 4 of the

BENGAL MEDICAL ACT (BENG. VI OF 1914)—concl'd.

s. 27—concl'd

Bengal Medical Act The petitioner's name was omitted from the preliminary list of persons qualified to vote at the first elections under the Act published by the Returning Officer appointed by the Local Government His name was also omitted from the final Election Roll

legal proceedings shall lie in respect of any act done in the exercise of any power conferred by the Act on the Local Government or the Council or the Registrar. The act which is referred to in 27 is not one done by the Local Government, but done in exercise of any power conferred by the Act on the Local Government. *Per Chaudhuri, J.*—It is quite clear that under s 33 of the Bengal Medical Act the Local Government has power to make rules for the purpose of carrying out the Act, and the rules framed and published were not *ultra vires*. *Per Woodroffe and Cox, JJ.*—Even assuming that the rules were *ultra vires*, the application must fail, for it was based on the assumption that the rules were not *ultra vires* but that they were valid rules which had not been given effect to in one particular by the Returning Officer. NARENDRA NATH BASU v H. L. STEPHENSON (1914) 19 C. W. N. 129

BENGAL MUNICIPAL ACT (BENG. III OF 1884).

ss. 321, 322 (f)—"Dwelling house," what is To "dwell" is "to live and occupy for all the purposes of life." A house in which a

place of business, but the owner used the place for residence while he was in a state of unsound

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*concl'd.*

p. 321--concl'd.

RADHA GOBINDA MOJUMDAR v. KEMAPENALI
MUNICIPALITY (1914) 19 C. W. N. 1027

BENGAL, NORTH-WESTERN PROVINCES
AND ASSAM CIVIL COURTS ACT (XII
OF 1887).

See CIVIL COURTS Act

ss. 21, 22—Notification by the High Court authorizing appeals from Munsifs to be "preferred to" Subordinate Judges—Jurisdiction. Held, that where the High Court in the exercise of

from the decree of any particular Munsif should be "preferred to" the Court of Subordinate Judge named or designated therein, the Subordinate Judge in question had power not merely to receive such appeals but also to hear and decide them. *Sohan Lal v. Baldeo Pershad*, 7 Oudh Cases, 321, approved. SHEO HARESH v. RAN CHANDRA (1914) I. L. R. 37 All 76

v. 22, cl. (3)—Agra Tenancy Act, (II of 1901), s. 197—Transfer of an appeal in a suit cognizable by a Revenue Court to a Subordinate Judge—Powers exercisable by the latter. *Held*, that where, under section 22, clause (f), of Act XII of 1887, a District Judge transfers an appeal to a Subordinate Judge, the latter may, if the section be applicable, exercise any of the powers vested in the Appellate Court by section 197 of the Agra Tenancy Act. *Babu Nandan Prasad v. Changur*, 1 L. R. 16 All. 360, followed. *AFTAL SHAH v. MUHAMMAD ABDEL KARIM* (1915). I. L. R. 37 All. 232

BENGAL SURVEY ACT (BENG. V OF 1875).

ss. 41, 63—Register kept in Survey Office showing what are darien lands.—Idem: Idem:

during a period anterior to that order the party against whom the order was passed was in possession. GRAHAM v PHANINDRA NATH MITRA. (1915). . . . 19 C. W. N. 1038

BENGAL TENANCY ACT (VIII OF 1885).

able. The use of the word "laimi" imports not fixity of rent, but only permanence of occupation of land. The description of a sub-lease granted by an occupancy raiyat as "sityae Larkha Labuliyai" did not necessarily imply that the grantee was intended to have a permanent heritable interest—an interest which the raiyat was not authorized to create by law. The interest of an under-raiyat is not heritable. *Amr Mondal v.*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

— s. 4—*concl.*

Ramratan Mondal, I. L. R. 31 Calc. 757: 8 C. W. N. 479, referred to. MEHER ALI v. KALAI KHALASI (1915). 19 C. W. N. 1129

— ss. 12, 63, Sch. II—*Permanent tenure, transfer of—Tenant, transferor or transferee—Tender of rent by transferee, coupled with demand of statutory receipt, if valid tender—Landlord, if may insist on giving receipt in another form.* The transfer of a permanent tenure under s. 12 of the Bengal Tenancy Act is complete as soon as the document is registered, and a valid transfer under that section operates to discharge the transferor from the liability to pay rent which thereupon passes to the transferee. As a consequence the transferee becomes by operation of law the tenant of the tenure, and the transferor ceases to be the tenant, though he is not thereby necessarily absolved from liability under the terms of the contract between him and the landlord. Such a transferee when he tenders rent as tenant is entitled under s. 63, Bengal Tenancy Act, to claim a receipt with his name thereon as that of the tenant. Where the landlord upon the transferee's demanding it refused to grant such a receipt and proposed to grant another describing the original tenant as still the tenant of the tenure and the transferee as merely the person in occupation thereof: *Held*, that there was a valid tender wrongly refused by the landlord. A tender is not vitiated because a receipt is asked. A tenant who tenders rent with a request for a receipt in the statutory form, does not seek to impose on the landlord any condition on which he is not entitled to insist, and when the landlord refuses to give such a receipt and offers to grant a receipt in a form which would compromise the position of the transferee, there is an improper refusal of a valid tender. *RUP CHAND GHOSE v. NARENDRA KRISHNA GHOSE (1914). 19 C. W. N. 112*

— s. 18—*Raiyat at fixed rent—Proof of permanency—Such raiyat if may grant leases—Sub-lessee, if may apply for deposit under s. 170 (3).* Where a raiyati lease explicitly stated that it was granted upon a rent of Rs. 5 a year, that the tenant would enjoy the land from generation to generation and that the landlord would not claim more rent than what was settled, the lessee was a raiyat at a fixed rate of rent and his interest was under s. 18 of the Bengal Tenancy Act, subject to the same provisions with respect to the transfer of and succession to the holding as that of a permanent tenure-holder under s. 11. The term "transfer" as used in s. 11 or s. 18 of the Bengal Tenancy Act includes a lease. The provisions of s. 85 of the Act are subject to those of s. 18 and the former section has no application where s. 18 applies. Where a raiyat at a fixed rate of rent granted a *makurari mautasi* sub-lease in favour of certain persons, and the latter in order to save the holding from sale in execution of a rent decree obtained against the raiyat applied to deposit the decretal amount under s. 170 (3) of the Bengal Tenancy Act:

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

— s. 18—*concl.*

Held, that they were entitled to do so. *HARI MOHON PAL v. ATUL KRISHNA BOSE (1913). 19 C. W. N. 1127*

— s. 22 (2)—*Acquisition of occupancy right by landlord—Holding, if ceases to exist—Occupancy holding and occupancy right, distinction between.* The plaintiff who was an occupancy raiyat subsequently purchased the superior tenure. Thereafter A, who was an under-raiyat on the holding, transferred his interest in the land to B. The plaintiff's suit was for ejecting B. *Held*, that the effect of the purchase by the plaintiff which must be determined with reference to s. 22 (2) of the Bengal Tenancy Act was to vest the holding in the purchaser subject to the limitation that the occupancy right ceased to exist and not that the holding itself ceased to exist and A continued to be an under-raiyat under the purchaser. That a comparison of the phrasology of sub-s. (2) with that of sub-s. (1) of s. 22 shows that in sub-s. (1) a distinction is made between "occupancy holding" and "occupancy right," and when the occupancy right ceases to exist, it does not follow that the holding also vanishes. *AKHIL CHANDRA BISWAS v. HASAN ALI SADAGAR (1913). 19 C. W. N. 246*

— ss. 26, 178, sub-s. (3), cl. (d)—

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 254

— s. 29—

1. — *Class of agreements in kabuliyats not affected by the section.* An agreement embodied in a *kabuliyat* to pay a certain amount of rent agreed upon by the parties in settlement of a *bona fide* dispute regarding the rate of rent and to avoid further litigation, is not an agreement in violation of the terms of s. 29 of the Bengal Tenancy Act. *BATA MONDAL v. MANENDRA CHANDRA NANDI (1914). 19 C. W. N. 321*

2. — *Kabuliyat, construction of—Hajat, allowance of, for a term, at the end of which full rent payable—Suit for full rent at the end of the term, if suit for enhancement.* In a *kabuliyat*, dated 1st of Baisakh 1295, executed in respect of a *meadi sarasari jote* which was to have effect for three years, the amount of rent was stated to be Rs. 19 odd, but it was provided that a *hajat* (deduction) of Rs. 10-8-1½ *gandas* was to be allowed till the end of the term, but that on the expiry of the term, the full *jama* of Rs. 19 odd was to be paid. The landlord sued upon the *kabuliyat* to recover arrears of rent for the year 1299 onward at Rs. 19 odd. The tenant did not set up any case that the document was never intended to be acted upon, and nothing in regard to conduct amongst themselves was placed by the parties for determination before the Court. *Held*, upon a construction of the *kabuliyat*, that the suit was not for enhancement and that s. 29 of the Bengal Tenancy Act was no bar to recovery by the landlord at the rate

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*s. 23—*conclid.*

claimed. *ROMES CHANDRA BISWAS v GOLAM NABI FARIE* (1898) . . . 19 C. W. N. 867

are, in some respects, joint trustees. Where one of two *shebais* of an idol sued a tenant holding *debutler* land for enhancement of rent under s. 30, Bengal Tenancy Act, making the other *shebai* a co trustee, and alleging that the latter had ceased to reside in the village and was no longer interested in the management of the endowed property, and the defendant *shebai* filed a written statement in which she stated that she had no longer any connection with the endowment and did not object to enhancement of rent at the plaintiff's instance: *Held*, that the plaintiff and defendant were joint landlords within

as co *shebais* in a manner known to law known have been proved to justify the plaintiff suing alone. *ABDEL GOFUR MANDAL v. UMARANTA PANDIT* (1914) . . . 19 C. W. N. 260

s. 40—Competence of Revenue Court where tenant not occupancy raiyat and rent not produce rent—Civil Court if may question its competence on such ground. The exercise of jurisdiction by a Revenue Court under s. 40 of the

DEBKA SUDHAN MAL . . . 19 C. W. N. 825 (1915).

s. 50 (2)—Slight variations in the rent paid with corresponding variations in area—Presumption of permanency, if arises. Where a raiyat proved that for over 20 years, that is to say, from 1882 he had been paying the same rent for the

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*s. 50—*conclid.*

sponding variation in the area. *Hurroath v. Amir*, 1 W. R. 230, and *Anundoll v. Hilla*, 4 W. R., Act X, 33, relied on. *Biscesoor v. Woomachurn*, 7 W. R. 14 and *Gopal Mandul v. Nobbo Kishan*, 5 W. R., Act X, 33, referred to. *GRANT v. HAR SAHAY SINGH* (1913) . . . 19 C. W. N. 117

ss. 52, 188—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 42, CL. 1 (a) and (b) and 2.

I. L. R. 38 Mad. 524

ss. 61, 62, Sch. III, Art. 2 (a)—Rent payable partly in cash and partly in kind and in lieu of latter a fixed sum—Deposit by tenant—Amount deposited less than amount due—Suit by landlord to recover rent—Limitation. The provisions of ss. 61 and 62 of the Bengal Tenancy Act, taken as a whole, support the view that the period of limitation prescribed in Art. 2, cl. (a) of Sch. III of the Bengal Tenancy Act is applicable to a suit

Sridhar Roy v. Rameswar Singh, 1 L. R. 15 Cal. 166, and *Sati Prosad Garga v. Monnotha Nath* . . . No deposit can

able to such a case. *After Morole v. Prasanna Kumar Ghosh*, 12 C. L. J. 649 15 C. W. N. 249, referred to. *SASIBHUTAN DEY v. UMA KANTA DEY* (1914) . . . 19 C. W. N. 1113

ss. 86 (6), 88—Surrender of holding without the consent of mortgagee of portion of holding—Suit to eject mortgagee after extinction of remaining land with another—Subdivision of holding. The provision of s. 86 (6) of the Bengal Tenancy Act embodies within certain bounds the principle that the lessee has no power to effect by surrender anything he could not do by assignment to a third person. *Walter v. Falden*, [1902] 2 K. B. 301, referred to. A surrender of a raiyati holding by the raiyat, without the con-

with another, the subdivision of the holding was effected by the landlord and so did not offend against s. 88. *RAJCHAND SINGH v. WILLIAM COX* (1914) . . . 19 C. W. N. 208

s. 87—

See OCCUPANCY HOLDING.

I. L. R. 42 Cal. 172

If exhaustive—Easement by tenant. S. 57 of the Bengal Tenancy

BENGAL TENANCY ACT (VIII OF 1885)—*contd.***s. 87—*concl'd.***

Act is not exhaustive and the landlord may proceed by suit if he can prove that the facts and circumstances of the case lead to an inference of abandonment. *MATOOKDHARI SHUKUL v. JUGADIP NARAIN SINGH* (1914) . 19 C. W. N. 1319

s. 105—

1. *Enhancement of rent—Second appeal, if lies against decision of Special Judge.* A second appeal lies to the High Court against the judgment of the Special Judge affirming a decision of the Assistant Settlement Officer allowing enhancement of rent in a case brought by the landlord under s. 105, Bengal Tenancy Act, in which the decision depended upon whether the raiyat was an occupaney raiyat only or a raiyat at fixed rates, the question being one as to the incidents of the tenancy. *Prithichand Lal Choudhury v. Basarat Ali*, 13 C. W. N. 1149; *I. L. R. 37. Calc. 30*, and *Bisheshur Ray v. Rajendra Kumar*, 18 C. W. N. 949, followed. *AKBAR ALI KHAN v. SYED ABBAS* (1915) . 19 C. W. N. 1328

2. *Record-of-rights, applicability of—S. 103A, if precludes enquiry as to correctness of entry.* Where on an application by a landlord under s. 105 of the Bengal Tenancy Act for settlement of fair rent wherein he claimed enhancement against a tenant who was wrongly entered in the record as *korfa*, and the purpose of whose tenancy was described as residential, the special Judge enhanced the rent: *Held*, that the decision of the Special Judge was without jurisdiction inasmuch as the tenancy was not governed by the Bengal Tenancy Act and the tenant was not estopped from raising this plea. The provision of s. 103A of the Tenancy Act that the publication of the record-of-rights shall be conclusive evidence that it has been duly made under the Chapter does not preclude a Court from enquiring as to the correctness of the resultant entry; it only precludes the Court from going into the question whether the procedure under the Chapter has been followed. *RAMDAS MUKERJEE v. BIPRODAS PAL CHOUDHURY* (1913)

19 C. W. N. 35

ss. 105, 106, 109—Landlord's application for settlement of fair rent—Tenants not allowed to prove land *lakheraj* or held at fixed rent—Settlement of fair rent if precludes suit to declare land *lakheraj* or held at fixed rent—Omission to sue under s. 106, if bars suit in Civil Court. The decision of a Settlement Officer in a proceeding initiated by the landlord under s. 105 of the Bengal Tenancy Act (before amendment by Beng. Act I of 1907) as to what is fair and equitable rent is no bar to a suit by the tenants for a declaration that the lands in respect of which the rents have been settled were *lakheraj* or were held at fixed rents. Section 109 of the Act would be no bar to such suits as it was not competent to the Revenue Officer in a proceeding under s. 105 to go behind the finally published record-of-rights. The fact that

BENGAL TENANCY ACT (VIII OF 1885)—*contd.***s. 105—*concl'd.***

the tenants did not institute suits under s. 106, did not deprive them of their right to sue in the Civil Court. *SASHI BHUSAN HAZRA v. SHEIKH ESHABAR ALI NAZIR* (1915) . 19 C. W. N. 636.

s. 105A—Settlement of jungle and waste land for reclamation—Co-sharer landlord managing estate—Occupation and reclamation by lessee acquiesced in by all the co-sharers—Subsequent refusal by same after partition to accept lessee as tenant in respect of their particular shares—Status acquired by lessee—Lessee, if entitled to have fair rent assessed. The plaintiff sued to have fair rent settled in respect of land held by him. The land in suit was originally included in a village which belonged to one B and his co-sharers, and was partly jungle and partly waste. B took possession of the land without any protest by his co-sharers and in the ordinary course of management of the estate settled the land with the plaintiff. Subsequently there was a partition amongst the co-sharers, and some of them accepted rent from the plaintiff while two of them refused to do so. So far as the lands allotted to their shares were concerned, there was no suggestion that the plaintiff came into occupation of the land against the will of the co-sharers of B, who on the other hand acquiesced in the occupation by the plaintiff and in the reclamation of the land by her at considerable cost for a number of years. *Held*, that the position of the plaintiff was not worse than what it would have been if he had in good faith accepted settlement from a trespasser in actual occupation of the land in which event even he would have attained the status of a raiyat. That the plaintiff was entitled to have fair rent assessed in respect of the land held by him. *Watson v. Ram Chund*, *I. L. R. 18 Calc. 10*, *Binod Lal v. Kalu*, *I. L. R. 20 Calc. 708*, and *Radha Proshad v. Esup*, *I. L. R. 7 Calc. 414*, referred to. *DAKHYANI DASSI v. MONO RAJ* (1913) . 19 C. W. N. 407

s. 106—Person out of possession claiming land recorded as *mal to be lakheraj*, if may sue under s. 106—Recovery of possession, if may be given in such suit—Declaration of right when out of possession, if proper. A person who is not in possession of land which is claimed as rent-free at the date of the record-of-rights cannot have the mere question of his title to hold the land rent-free tried in a suit under s. 106 of the Bengal Tenancy Act. *Padmalav v. Lakhi Rani*, 12 C. W. N. 8, *Kali Sundari Debya v. Girija Sankar Saynal*, 15 C. W. N. 974, and *Ram Chandra v. Nanda Nandanaranda Gossain*, 18 C. W. N. 938; *19 C. L. J. 197*, referred to. A plaintiff cannot sue for possession under sec. 106 of the Bengal Tenancy Act. Nor, if he is out of possession at the date of the suit, can he be given a declaration of his right to get possession. He can obtain complete remedy only in a suit in the Civil Court. *Nilmani Kumar v. Kedar Nath Ghosh*, 17 C. W. N. 750, followed. The words "or as to any other matter" in s. 106 must have reference to the

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*s. 106—*contd.*

matters indicated in s. 102. *PRAN KRISHNA SAHA v. TRILAKHYA NATH CHOUDHURY* (1915)

19 C. W. N. 911

s. 109A—*When bars an appeal—Question of jurisdiction.* S. 109A of the Tenancy Act is no bar to an appeal in a case of settlement of rent in which a question of jurisdiction is definitely raised. *RANDAS MUKERJEE v. BIPRODAS PAL CHOUDHURY* (1913).

19 C. W. N. 35

s. 109B—*Scope of enquiry under.* The enquiry under sub s. (1) of s. 109B is obviously contemplated in a case where the agreement or compromise has been made for the purpose of settling a dispute, namely, a dispute which the Revenue Officer would be called upon to decide on the merits but for the agreement or compromise. Section 109B clearly does not apply to a case, where the contract between the parties was made several years before the settlement proceedings. *BATA MONDAL v. MANENDRA CHANDRA NANDI* (1914).

19 C. W. N. 321

s. 111—*Suit for alteration of rent brought within three months of final publication of record of rights, if should be dismissed or stayed.* A suit for alteration of rent instituted within three months of the final publication of the record of rights should not be dismissed altogether but should be stayed until the expiry of this period. On appeal from a decision of the lower Appellate Court dismissing such a suit, the three months having expired long ago, the High Court directed a trial of the suit on the merits *de novo*, the appellant being directed to pay the costs of the lower Appellate Court and of the High Court. *Ram Narayan v. Lachmi Narayan*, 17 C. L. J. 239, 17 C. W. N. 408, followed. *KURA KOEN v. LACHMAN GORE* (1913).

19 C. W. N. 1141

ss. 111A, 104H, 103B—*Occupancy right, suit for declaration of, after final publication of record of rights—Limitation—Presumption as to correctness of record, rebutting of.* The plaintiff brought his suit for a declaration that he was an occupancy raiyat of the land in suit. The suit was brought more than six months from the

created by s. 103B of the Bengal Tenancy Act was rebutted. That the suit came within the proviso to s. 111A and not under s. 104H and was not barred by limitation. *KUMEDA PROSADNA BHUIYA v. SECRETARY OF STATE FOR INDIA* (1914).

19 C. W. N. 1017

s. 153—

1. *Commuted order by Revenue Court, if bars trial of tenant's status in*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*s. 153—*contd.*

Civil Court—Jurisdiction of Revenue Courts—Question as to amount annually payable. Where the landlord sued to recover rent at an annual rate of Rs. 30, the price stated in the tenant's *labuliyat* of the paddy payable by the tenant as rent, and the latter on the strength of a commutation order made under s. 40 of the Bengal Tenancy Act alleged that the rent was recoverable at the rate of Rs. 13 6 6 a year. *Held*, that the decision of the lower Appellate Court upholding the tenant's plea was a decision on a question of the amount of rent annually payable within s.

be continued is an occupancy raiyat. A dispute as to the status of the tenant cannot be finally decided by the Revenue Court in such a proceeding so as to make such decision conclusive between the parties in the Civil Court. The tenant being found in this case to be an under raiyat. *Held*, that the order under s. 10 made by the Revenue Court was without jurisdiction. *Lalla Saligram Singh v. Mohunt Rangir*, 3 C. W. N. 311, distinguished. *KALI KRISHNA BISWAS v. RAM CHANDRA BAIDYA* (1913).

19 C. W. N. 823

2. *Explanation—Rent sale—Purchase by decree holder—Judgment debtor's application to set aside on ground of fraudulent suppression of notices—Dismissal on ground that case not brought within s. 18 of Limitation Act, if appealable.* Where more than 30 days after a sale in execution of a decree passed in a suit for recovery of rent, in which the amount claimed did not exceed fifty rupees, an application was made to set it aside on the ground that no processes of attachment or proclamation were served upon the properties, and that the decree holder fraudulently and in collusion with the peon got all the processes suppressed and having thus brought about the sale purchased the property himself, but the Munsif refused to set aside the sale on the ground that there was no such fraudulent concealment as to bring the case within s. 18 of the Limitation Act: *Held*, per Curiam, that this was not a finding upon a question as to the irregularity of the proceedings in publishing or conducting the sale within the meaning of the explanation to s. 153 of the Bengal Tenancy Act, and an appeal lay from the Munsif's decision under the Full Bench ruling in *Kali Mondal v. Ram-sarbanar Chakrabarty*, 1 L. R. 52 Cal. 277; 9 C. W. N. 721. Per N. K. Chatterjee, J.—A question as to fraud in publishing or conducting a sale is not covered by the explanation. Per Mulla, J.—An irregularity in publishing or conducting a sale may be accompanied with or without fraud. The explanation does not exclude from its scope an irregularity tainted by fraud. *NABIN CHANDRA CHOUDHURY v. BIRIN CHANDRA CHOUDHURY* (1913). 19 C. W. N. 953

BENGAL TENANCY ACT (VIII OF 1885)—contd.

ss. 153, 143, sub-s. (2)—*Appeal against dismissal of suit for recovery of arrears of rent for less than Rs. 100, ex parte decree in—Order refusing application for rehearing of appeal, if appealable—Suit, meaning of, if includes appeal—Application for re-hearing of appeal, if an application in the suit—Civil Procedure Code, application of, to suits between landlord and tenant.* A suit for recovery of arrears of rent for less than Rs. 100 was dismissed on the merits. The plaintiff's appeal against this decree was decreed *ex parte*. The respondent's application under O. XXI, r. 21, Civil Procedure Code, to have the appeal re-heard in his presence having been refused an appeal was preferred against this order to the High Court: *Held*, that s. 153 of the Bengal Tenancy Act was a bar to the appeal. The term "suit" includes the appellate stage, and an application to re-hear the appeal is clearly an application in the suit. Sub-s. (2) of s. 143 of the Bengal Tenancy Act, which makes O. XLIII, r. 1, cl. (4), Civil Procedure Code, applicable to suits between landlord and tenant, makes it applicable subject to the operation of the restrictive provision of s. 153 of the Bengal Tenancy Act, and the absence of the restrictive words "in a case open to appeal" from cl. (4) does not give the right of appeal. CHAMUD SHEIKH v. NABA GOPAL GHOSH (1914) . . . 19 C. W. N. 359

[s. 153A—*Ex parte decree or rent, application to set aside—Tenant when bound to deposit rent admitted—Tenant alleging land in suit only part of holding bearing another jama—Application made out of time, entertained by Court without adjudication of question of limitation—Revision by High Court—Civil Procedure Code (Act V of 1908), s. 115.* The admission contemplated in s. 153A of the Bengal Tenancy Act is an admission that rent is due in respect of the holding for which the suit has been instituted. Where the tenant defendant alleged that the land mentioned in the plaint as constituting a holding of a jama of Rs. 3-10 was in fact a part of a holding bearing an annual jama of Rs. 7-12: *Held*, that there was no admission of liability to pay rent in respect of the holding in suit but in respect of a different holding and s. 153A did not apply. TARA SANKAR GHOSH v. BASIRUDDI (1915) . 19 C. W. N. 970

s. 161—

1. ————— *Permanent under-raiyati lease, registered—Landlord of occupancy holding purchasing holding if bound to annul it as incumbrance or protected interest.* An under-raiyati lease registered in contravention of s. 85, sub-s. (2), of the Bengal Tenancy Act, is not operative against the superior landlord of the occupancy raiyat. *Jarip Khan v. Dorfa Bewa*, 17 C. W. N. 59, and *Manik Borai v. Bani Ch. Mandal*, 13 C. L. J. 649, referred to. The landlord of the occupancy holding purchasing that holding at a sale for its arrears cannot be called upon to annul a permanent under-raiyati lease created without his consent as an incumbrance within the

BENGAL TENANCY ACT (VIII OF 1885)—contd.**s. 161—concl'd.**

meaning of cl. (a) of s. 161 of the Bengal Tenancy Act, nor is such an interest a "protected interest" within s. 161, cl. (c), of the Act, so far as the landlord auction-purchaser of the occupancy holding is concerned. ASHU TOSH SINGHA v. BANOMALI SAIN (1913) . . . 19 C. W. N. 412

2. ————— *Stranger purchasing raiyati holding at sale for arrears of rent, if may eject under-raiyat without annulling his interest.* The interest of the under-raiyat is an "incumbrance" within the meaning of s. 161 of the Bengal Tenancy Act which a stranger purchasing at a sale for arrears of rent is bound to annul according to the procedure laid down in s. 167 of the Bengal Tenancy Act, and where this procedure has not been followed the purchaser is not entitled to eject the under-raiyat. JANAKI NATH HOBE v. PRABHASINI DAS (1915) . . . 19 C. W. N. 1077

ss. 161, 167—"Incumbrance," portion of putni tenure purchased from tenant if—*Sale of tenure in execution of rent-decree against registered tenant—Purchaser if must annul transferee's interest.* Jenkins, C. J. (agreeing with N. R. Chatterjee, J.)—The interest of an unregistered purchaser of a portion of a putni, tenure is not an "incumbrance." Within the meaning of s. 161 of the Bengal Tenancy Act and need not be annulled under s. 167 of the Act by the purchaser of the tenure at a sale in execution of a rent-decree obtained against the registered tenant. *Chander Sahai v. Kali Prosunna Chakerbutty*, I. L. R. 23 Cal. 251, referred to. *Per* Mullick J. (contra).—A purchaser from a registered tenant is in the position of a rent-free sub-tenant and is an incumbrancer within the meaning of s. 161 of the Bengal Tenancy Act. ABDUL RAHMAN CHOWDHURI v. AHMADAR RAHMAN (1915) . . . 19 C. W. N. 1217

s. 169—sub-ss. (1) (c), (2), Sch. III, Art. 2—*Rent sale—Surplus sale-proceeds, application by decree-holder for, towards discharge of subsequent arrears—Limitation, plea of, if may be taken.* Under cl. (c) to sub-s. (1) of s. 169 of the Bengal Tenancy Act, the decree-holder landlord is entitled to have the surplus sale-proceeds paid to him in discharge of arrears of rent due from the date of the institution of the suit to the confirmation of the sale, even though on the date of his application for such payment, a suit to recover those arrears would be time-barred. Art. 2 of Sch. III of the Bengal Tenancy Act provides for suits and not for applications of this kind. NARENDRA LAL KHAN v. SARAT CHANDRA BHATTACHARJEE (1915) . . . 19 C. W. N. 582

s. 171—

See RATES AND TAXES.

I. L. R. 42 Cal. 625.

ss. 178 (1) (d), 194—*Lease to tenure-holder, containing covenant not to excavate tank—Sub-lease to raiyat, without covenant—Excavation of tank by raiyat, found an improvement—Suit*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*s. 178—*concl'd*

for damages for breach of covenant, who liable—*Nominal damage—Vindictive damage.* Where a lease created in favour of certain tenure holders contained a covenant by the latter not to excavate a tank, but a tank was nevertheless excavated by a raiyat who had taken from the tenure holders a sub lease which did not impose any similar restric

effectively inserted a restrictive covenant against excavation of tanks in the sub lease granted to the raiyat. That for the breach of the covenant, the tenure holders were liable, but not the raiyat between whom and the superior landlord there was neither privity of contract nor privity of estate. That although the tank was found to have improved the land, and the plaintiff thus suffered no damage in fact, he was entitled at least to nominal damage (which is not necessarily small damage) in vindication of his legal right—the breach of the covenant not appearing to have been deliberate, in which case vindictive damages might have been awarded. *Mediana v Comel*, [1900] A C 113, 116, *Whitham v Kershaw*, 16 Q B D 613, 618, *Williams v Williams* L R 9 C P 659, *Wiggall v The Corporation of the School for the Indigent and Blind*, 3 Q B D 357, *Mellor v Spoleman* 1 Saunders 346b, and *Patrick v Greenaway*, 1 Saunders 346b, note, referred to. *AKHAR HUMAN CHATTERJEE v AKHAR MOLLA* (1914)

19 C. W. N. 1187

ss. 182, 20—*Raiyat, giving home stead portion of his holding in sub lease to settled raiyat of another village—Sub lessee of under raiyat or has occupancy right.* Where a raiyat whose holding consisted partly of agricultural and partly of homestead land let out the homestead portion to a person who held land as a settled raiyat under a different landlord in an adjoining village. Held, that the incidents of the sub lease of the homestead portion would be governed not by the Transfer of Property Act but by the Bengal Tenancy Act. That as s. 182 of the Bengal Tenancy Act applied, the sub lessee held the homestead as a raiyat. *KRISHNA KANTA GHOSH v JADU KANTA* (1913).

19 C. W. N. 914

s. 188—S. 188 of the Bengal Tenancy Act does not apply to joint tenants, and a suit by a co sharer for abatement of rent is maintainable. *KHATTIMAMANI DAS v JIBAN KRISHNA HUNDU* (1914).

19 C. W. N. 548

Sch. III, Art. 2, cl. (6)—*Jalkar lease, due payable under, if rent within the meaning of Bengal Tenancy Act—Suit for recovery of such money if governed by special limitation—Interest rate of, upon arrears of such money.* A Jalkar does not necessarily imply any right to the soil and a suit for the recovery of money payable under a lease merely conferring a right of fishing and no right to land is governed by the special limitation provided by Sch. III, Art. 2, cl. (6), of

BENGAL TENANCY ACT (VIII OF 1885)—*concl'd*Sch. III—*concl'd.*

the Bengal Tenancy Act. Money reserved in such lease is not rent within the meaning of the Bengal Tenancy Act and interest at the rate of 12½ per cent as provided in s. 67 of the Act cannot be allowed in respect of arrears of such money. *KRISHNA LAL CHOUDHURY v SALIM MAHAMED CHOUDHURY* (1914) 19 C. W. N. 514

Sch. III, Art. 6—

1. *Bent-decree, obtained by co sharer landlord—Limitation for execution.* In the case of rent decree obtained by a co sharer landlord, the other co sharers not having been made parties, the period of limitation prescribed for the execution of the decree is that contained in Art. 6 of Sch. III of the Bengal Tenancy Act, i.e., three years only, and not 12 years as provided by the Code of Civil Procedure. *BYOMKESH CHAKRABARTY v HALADHAR MANDAL* (1915) 19 C. W. N. 1271

2. *Suit by co sharer landlord for his share of rent not making other co sharers parties—Decree, execution of—Limitation.* An application for execution of a decree obtained by a co sharer landlord for his share of the rent, in a suit to which the other co sharers were not parties, the decree being for a sum of money not exceeding Rs. 500, is governed by the special limitation provided by Art. 6 of Sch. III of the Bengal Tenancy Act, as amended by Act I of 1908. *NARENDRA CHANDRA LAHIRI v ARIPANNESHA BISI* (1913) 19 C. W. N. 751

REQUEST.

by co-parcener—

See HINDU LAW—WILL.

I. L. R. 39 Bom. 593

BHAODARI AND NARWADARI TENURES ACT (BOM. V OF 1892).

s. 3—*Unrecognised sub division of a bhag—Mortgage—Covenant in the mortgage-deed—Claim for compensation based on covenant maintainable—Contract Act (I of 1872), s. 65—Specific Relief Act (I of 1877), s. 35—Mortgagee holding as tenant of mortgagee for upwards of twelve years—Adverse possession of limited interest.* In 1857, the house in suit and certain other properties were mortgaged to the plaintiff's father by the defendant, they having purchased the properties from the bhagdar owner in 1853. In 1901, on accounts being taken, part of the property was sold to pay part of the mortgage debt, while the balance of the debt was secured by a fresh mortgage of the house in suit. The deed of mortgage contained a covenant in the following terms:—"If there should be any hindrance or obstruction concerning the house, or if the house should be taken out of your possession, then we and our property and our heirs and representatives are liable for any loss you may

BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862)—concl'd.**s. 3—concl'd.**

suffer and for your moneys advanced." Ever since 1897 the defendants held the house as plaintiff's tenants under yearly rent-notes, the last of which was passed on 20th June 1908. At the termination of the last rent-note, that is in July 1909, the defendants refused to surrender possession to the plaintiff. On the 9th November 1910, the plaintiff sued to recover possession of the house or in the alternative Rs. 749 as compensation. The defendants contended that both the mortgage and rent-notes were void under the Bhagdari Act and that the suit was barred by limitation. The lower Courts upheld these contentions and dismissed the suit. The plaintiff having appealed:—*Held*, (i) that the mortgage as well as the rent-notes were void under the provisions of Bhagdari Act, 1862; (ii) that, so far as the contract of mortgage was concerned, the consideration failed *ab initio*, and the money advanced by the plaintiff being money received by the defendants for the plaintiff's use, the suit to recover it was barred under Article 62 of the Limitation Act; (iii) that, although the mortgage was void under the Bhagdari Act, it was open to the plaintiff to claim under the covenant contained in the mortgage-deed; (iv) that the plaintiff's possession from February 1897 to July 1909 gave him an absolute title to the limited interest as mortgagee and so justified his claim under the covenant for compensation for disturbance; (v) that the claim under the covenant was within time for the breach of the covenant did not occur till 1909 when the defendants refused, on demand, to surrender possession. *JAVERBHAI JORABHAI v. GORDHAN NARSI* (1914) . . . I. L. R. 39 Bom. 358

BHINNA-GOTRA SAPINDAS.

See HINDU LAW—INHERITANCE.

I. L. R. 42 Calc. 384

BILL OF LADING.

Clause of exemption from liability after goods are free of ship's tackle, validity of—Common carriers by sea, governed by English Law and not by Indian Contract Act (IX of 1872)—Indian Contract Act (IX of 1872), s. 23—Exemption clause not void under—Seaworthiness, definition of—Warranty of seaworthiness not extending to lighters or boats—Binding force of Privy Council decision on India, though not in an Indian case. Carriers, by sea for hire are common carriers, to whom the Carriers Act (III of 1865) does not apply. *Hajee Ismail Sait v. The Company of the Messageries Maritimes of France*, I. L. R. 28 Mad. 400, followed. The duties and liabilities of a common carrier are governed in India by the principles of the English Common Law on that subject (except where they have been departed from, in the cases of some classes of common carriers, by the Carriers Act of 1865 or by the Railways Acts of 1878 and 1890), and that notwithstanding some general expressions in the Chapter on Bailments, a common carrier's

BILL OF LADING—concl'd.

responsibility is not within the Indian Contract Act of 1872. *The Irrawaddy Flotilla Company v. Bugwandas*, I. L. R. 18 Calc. 620, followed. A provision in a charter party to the effect that "in all cases and under all circumstances the liability of the company (of shipowners) shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee," affords complete protection to the shipowners against all losses in respect of goods arising from any cause at any time after the goods are free of the ship's tackle, whether the cause of the loss be (a) as in this case the sinking of the boats, which conveyed the goods from the ship to the shore, a sinking occasioned by the negligent overloading of the boats by the shipowner's landing agents or (b) by the misfeasance and fraud of their landing agents. *Sheik Mahamad Ravuther v. The British India Steam Navigation Co., Ltd.*, I. L. R. 32 Mad. 95, and *Chartered Bank of India, Australia and China v. British India Steam Navigation Co., Ltd.*, [1909] A. C. 369, followed. Such a clause as the above is, according to English Law, not opposed to public policy and is valid; and section 23 of the Indian Contract Act has no application. A decision of the Privy Council though not in a case arising from India is binding on the Courts in India. *Obiter*: The warranty of seaworthiness which is implied as to the ship does not extend to the lighters or boats employed to land the cargo. Even this warranty to the ship is satisfied if the ship be originally seaworthy, i.e., when she first sails on the voyage insured; she need not continue so throughout the voyage. *Lane v. Nixon*, 1 C. P. 412, followed. *Sparrow v. Carruthers*, 2 Strange, 1236, doubted. *KUMBER v. THE BRITISH INDIA STEAM NAVIGATION CO., LTD.* (1913)

I. L. R. 38 Mad. 941

BIRTH.

_____ right by—

See HINDU LAW—PARTITION.

I. L. R. 38 Mad. 556

BOARD OF REVENUE.

_____ reference by—

See STAMP ACT (II of 1899), s. 57 (b).

I. L. R. 37 All. 125

BOATS OR LIGHTERS.

See BILL OF LADING.

I. L. R. 38 Mad. 941

BOMBAY ACTS.

_____ 1862—V.

See BHAGDARI AND NARWADARI TENURES ACT.

_____ 1862—VI.

See AHMEDABAD TALUQDARS ACT.

_____ 1869—XIV.

See BOMBAY CIVIL COURTS ACT.

BOMBAY ACTS—concl'd.

1874—III.

See HEREDITARY OFFICES ACT.

1878—II.

See BOMBAY CITY LAND REVENUE ACT

1878—X.

See REVENUE JURISDICTION ACT

1879—V.

See BOMBAY LAND REVENUE CODE

1879—XVII.

See DEAKHAN AGRICULTURISTS' RELIEF ACT

1887—VI.

See NATADARS ACT

1888—VI.

See GUJARAT TALUQDARS ACT

1901—III.

See DISTRICT MUNICIPAL ACT

1904—I.

See BOMBAY GENERAL CLAUSES ACT

1906—II.

See MANLATDARS' COURTS ACT, BOMBAY

BOMBAY CIVIL COURTS ACT (XIV OF 1869).

of the Bombay Civil Courts Act (XIV of 1869) does not authorize any reference to an Assistant Judge to decide a suit under the Indian Divorce Act (IV of 1869) THOMAS FRENCH v JULIA FRENCH (1914) I. L. R. 39 Bom. 138

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BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1878).

ss. 30, 35, 39 40—Certified extracts of Rent Roll of "quit and ground rent" land—Office of Collector of Bombay—Statements therein as to nature of tenure of land—Suit by

purpose only that it sets up machinery, namely, to ascertain who is liable to pay revenue. The Collector is a revenue official, and it is only in so far as the collection of revenue is concerned that he is entrusted with the duty of preparing a register and keeping records. The public are given access to these only in order to satisfy themselves that they are being properly assessed. The Act does not purport to establish a system of registration of title which is to supersede other means of convey-

BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1878)—concl'd

s. 30—concl'd.

ing or registering the title to land, or to relieve purchasers or mortgagees from the ordinary obligations to see that they get what they have contracted to get. No doubt the register is of considerable use even for conveyancing purposes. But neither the language of the Act, nor the character of the officials who have the duty of keeping it, is such as to indicate an invitation to the public to rely on statements in the records as to title which may have to be made incidentally, but which are not expressed and do not purport to be decisive either of the rights of Government or of those of the individual as to matters which go beyond liability to contribute to the land revenue. When therefore, the

Act in the office of the Collector of Bombay to the effect that the land was of quit and ground rent," and not of "Sanad" tenure, and therefore not liable to be resumed by the Government. Held, that the respondent was not estopped by such certified extracts from treating the land as being of "Sanad" tenure, and liable to resumption. MEHAWANI MUNCHERJI CANA v SECRETARY OF STATE FOR INDIA [1914]

I. L. R. 39 Bom. 684

BOMBAY LAND REVENUE CODE (BOM. V OF 1879).

ss. 68, 73—

See KASBATIS I. L. R. 39 Bom. 625

BOND.See MORTGAGE I. L. R. 37 All. 426
for appearance—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 90, 91 AND 537

I. L. R. 38 Mad. 1093

Slavery bond—Public policy—Overwhelming interest Where in a bond the executant bound himself down to daily attendance and manual labour until a certain sum was repaid in a certain month, and it penalised default with overwhelming interest. Held, that such a bond was not enforceable at law being opposed to public policy. RAM SARTI BHAGAT v BANSI MANDAR (1915)

I. L. R. 42 Calc. 742

BONUS.

stipulation for—

See PATNI LEASE.

I. L. R. 42 Calc. 1029

BOUGHT AND SOLD NOTES.

See SALE OF GOODS.

I. L. R. 42 Calc. 1050

BREACH OF CONTRACT.

See CONTRACT . I. L. R. 38 Mad. 791

procuring of—

See MARRIAGE, CONTRACT OF.

I. L. R. 39 Bom. 682

BREACH OF TRUST.

See TRUSTEE . I. L. R. 38 Mad. 71

BROKER.

personal liability of—

See SALE OF GOODS.

I. L. R. 42 Calc. 1050

BUNDELKHAND ALIENATION ACT (U.P. II OF 1903).

s. 3—

1. ——— Agricultural tribe
—*Suit for pre-emption—Sanction.* The sanction contemplated in section 3 of the Bundelkhand Alienation of Land Act, 1903, applies to a voluntary transfer, and there is no provision in the Act which entitles an intending pre-emptor to get the sanction of the Collector to bring a suit for pre-emption. Therefore a Court is not entitled to grant a decree for pre-emption to a person who is not entitled to purchase the property in question not being a member of the agricultural tribe within the meaning of section 3 of the Bundelkhand Alienation of Land Act. *SURAJ BHAN v. SOMWARPURI* (1915) . I. L. R. 37 All. 662

2. ——— Equity of redemption sold and pre-empted—*Sale of mortgagor's rights—Rights of purchaser.* The policy of the Bundelkhand Land Alienation Act is to prevent persons who are not members of an agricultural tribe from acquiring property and, the provisions of section 3 apply to all permanent alienations even though they are brought about by the exercise of the right of pre-emption. Property in Bundelkhand was mortgaged and subsequently the equity of redemption was sold by the owners to a certain person from whom it was pre-empted. The Collector, however, did not sanction the sale but ordered the name of the purchaser to be recorded as a usufructuary mortgagee. Later, the mortgagors sold this very property to the plaintiff. He brought this suit to redeem it from the defendant who was in possession as a prior mortgagee. *Held*, that the plaintiff had a right to redeem the property from the defendant inasmuch as the ultimate right of redemption remained in the representatives of the original mortgagor. This right they were entitled to transfer to the plaintiff. *RAM NATH v. HARANI* (1915)

I. L. R. 37 All. 467

BURDEN OF PROOF.

See AGRA TENANCY ACT (II OF 1901), s. 164 . I. L. R. 37 All. 595

See LIMITATION ACT (IX OF 1908), ARTS. 142, 144 . I. L. R. 39 Bom. 335

See ONUS OF PROOF.

See PENAL CODE ACT (XLV OF 1860), s. 456 . I. L. R. 37 All. 395

C**CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).**

ss. 223, 228—

See RATES AND TAXES.

I. L. R. 42 Calc. 625

ss. 343, 442—*Notice for removal of dilapidated hut belonging to tenant if can be served on the landlord.* The definition of owner of land as given in s. 3, sub-s. (32), includes both the landlord and the tenant and a notice under s. 343 for the removal of a hut belonging to the tenant can be served upon the person who is the owner of the land and such person having had a notice served upon him is liable to comply with the terms thereof. S. 442 of the Act which contemplates a different set of circumstances does not in any manner abridge the power conferred by s. 343. *CORPORATION OF CALCUTTA v. MONMOTHA NATH SETT* (1914) . 19 C. W. N. 391

CANCELLATION OF ORDER.

See PROBATE AND ADMINISTRATION ACT (V OF 1881), s. 50.

I. L. R. 37 All. 380

CAPITAL CASES.

See PUBLIC PROSECUTOR, DUTY OF.

I. L. R. 42 Calc. 422

CARE AND PRUDENCE.

degree of—

See TRUSTEE . I. L. R. 38 Mad. 71

CARGO.

See CONFISCATION.

I. L. R. 42 Calc. 334

CASTE.

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 538

CASTE QUESTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 97 . I. L. R. 39 Bom. 339

CAUSE OF ACTION.

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11, EXPL. IV, O. II, R. 2.

I. L. R. 39 Bom. 138

See CIVIL PROCEDURE CODE (1908), s. 20 (c) . I. L. R. 37 All. 189

See HINDU LAW—WILL.

I. L. R. 42 Calc. 561

See HINDU LAW—WILL.

I. L. R. 37 All. 422

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS 91 AND 120.

I. L. R. 37 All. 640

CAUSE OF ACTION—concl'd.

See MADRAS ESTATES LAND ACT (I OF 1908), s 192 . I. L. R. 38 Mad. 635

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), ss 3, 5, 14

I. L. R. 38 Mad. 674

See TRADE MARK.

I. L. R. 37 All. 446

— for mesne profits—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, RR 2 AND 4

I. L. R. 38 Mad. 829

— for possession of land—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, RR 2 AND 4

I. L. R. 38 Mad. 829

— for return of purchase money on dispossession—

See LIMITATION ACT (IX OF 1908), SCH I, ARTS 62 AND 97

I. L. R. 38 Mad. 887

— survival against insolvent defendant—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XII, R 10

I. L. R. 39 Bom. 568

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881).]

ss. 83, 72, 68—Suit to correct an entry in record of rights of a suit under s 83—Limitation—Limitation Act (IX of 1908), Art 120. In a record of rights prepared under Chap VI of the Central Provinces Land Revenue Act, the appellants were described as *shikmi gaothas* or permanent tenants under plaintiffs. The plaintiffs sued to have the entry amended so that the appellants might be described as mortgagees and not as permanent tenants. *Held*, that the suit was within s 83 of the Act and a suit under that section is not governed by Art 14, but by Art 120 of the Limitation Act. Where the defendants having been recorded as "*shikmi gaothas*" the plaintiffs, *gaothas*, sued for a declaration that they were in possession as mortgagees only. *Held*, that the Settlement Officer acted either under s 68 or under s 72 of the Act, so that the Court had jurisdiction to entertain the suit under s 83. *NABAGHAN BAHADUR v. RAGUNATH BAHU* (1915) . . . 19 C. W. N. 1303

CERTIFIED COPY.

— filing of—

See APPEAL . I. L. R. 42 Calc. 433

CHARGE.

See CO-OPERATIVE SOCIETY

I. L. R. 42 Calc. 377

See DEBT . I. L. R. 42 Calc. 519

CHARGE—concl'd

See RAILWAY RECEIPT.

I. L. R. 38 Mad. 684

See RATES AND TAXES.

I. L. R. 42 Calc. 625

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 82 . I. L. R. 37 All. 101

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 118 to 120, 54 and 53, CL 6 (b) .

I. L. R. 38 Mad. 519

1. — Explosive Substances Act, 1883 (46 & 47 Vict c 3), s 4—Explosive Substances Act (VI of 1908) s 4 (b)—Charge, specifications of—Accused's right to know value thereof—Penal Code (Act XLV of 1860 as amended by Act VIII of 1913), ss 120, 120A, 120B, 121—“Explosive Substance”—By means thereof—“Unlawfully and maliciously”—Criminal conspiracy—Misjoinder of charges—Criminal Procedure Code (Act V of 1898) ss 196, 235, 342, 360 (1), 417—Same transaction, limits of—Joinder of charges under s 4 (b) of Act VI of 1908 and s 120 B of the Penal Code—Co-conspirators, separate trial of—Crown's right to prosecute irrespective of the question of ultimate design—Presumption of innocence of accused, meaning of—Conspiracy, charge of—Prosecution, duty of—Explanation by accused, Want of, when fatal—Leading questions—Cross-examination of its own witnesses by prosecution, when permissible—Evidence Act (I of 1872), ss 10, 14, 15, 54, 135, 143, 154—Official witnesses for Crown whether privileged from disclosing source of information—Detective whether so privileged regarding place of secretion—Written statements of accused—Examination of accused—Comparison of handwriting by Court, propriety of—“Possession,” meaning of—Depositions, reading over of daily in open Court. An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him. But where the accused fully understood the nature of the offence with which they were charged, they had clearly not been prejudiced by the omission of the words “unlawfully and maliciously” and “in British India” occurring in section 4 (b) of Act VI of 1908. Such an omission can be cured by the word *et*. *The Queen v. Munshi*, [1895] 1 Q. B. 755, referred to. Where the illegal act charged under section 120 B is the unlawful and malicious possession of explosive substances within the meaning of section 4 of the Explosive Substances Act, 1908, it is not essential to specify in the charge the explosive substance which the accused have conspired to have in their possession or under their control. A person may be guilty of criminal conspiracy even though the illegal act, which he has agreed to do, has not been done, for “the crime of conspiracy consists only in the agreement or confederacy to do an illegal act by legal means or a legal act by illegal means.” *Reg. v. Herbert*, 11 Cox 87, *Queen v. Leatham*, [1901] 1 C. 495, *The Queen v. Most*, 7 Q. B. 114, 11 Cox 553, and *O'Connell v. The Queen*, 11 Cl. & F. 155, 1 Cox 413, 3 St. Tr. N. 81, referred to. The indictment in all cases of conspi-

CHARGE—contd.

they must in the first place charge the conspiracy, but in stating the object of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed. *The King v. Gill*, 2 B. & Ald. 204, *The Queen v. Kenrick*, 5 Q. B. 49, *The Queen v. Blake*, 6 Q. B. 126, *Sydschiff v. The Queen*, 11 Q. B. 215, *The Queen v. Gompertz*, 9 Q. B. 824; 2 Cox. 145, *Aspinall v. The Queen*, 2 Q. B. D. 48, *Taylor v. The Queen*, [1895] 1 Q. B. 25, *Reg. v. Parker*, 3 Q. B. 292, referred to. It is a wholesome rule that the Court should adhere to the language of the statute, as far as practicable, when a charge is drawn up; as nothing is gained by a paraphrase, while opportunity is afforded to the accused to take exception to the form of the charge. The accused cannot be convicted on a conspiracy charge under section 120 B, Indian Penal Code, unless the prosecution establishes that the accused were members of the conspiracy after the 27th March 1913 when Act VIII of 1913 became law. A comprehensive formula of universal application cannot be framed regarding the question whether two or more acts constitute the "same transaction"; the circumstances which must bear on its determination in each individual case are proximity of time, unity or proximity of place, continuity of action, and community of purpose or design. If A, B and C conspire to make, or have in their possession or under their control, an explosive substance within the meaning of the Explosive Substances Act, and, if in pursuance of such conspiracy A makes or has in his possession or under his control an explosive substance, they may, if the Court thinks fit, be charged and tried together under section 120 B, Indian Penal Code, and section 4 (b) of Act VI of 1908. If all the known co-conspirators named in the charge are not placed on their trial, the trial of some (separately) without the others is not vitiated. *Emperor v. Lalit Mohan Chuckerbutty*, I. L. R. 38 Calc., 559; 15 C. W. N. 593, explained. If the accused have committed an offence under section 4 (b) of the Explosive Substances Act, 1908, in pursuance of a criminal conspiracy, it is open to the Crown to prosecute them for such offences, irrespective of the question of the ultimate design of the alleged conspiracy coming under section 121A, Indian Penal Code (which charge requires previous sanction under section 196, Criminal Procedure Code). In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *R. v. Hodge*, 2 Lewin C. C. 277, referred to. The presumption of innocence (in criminal cases) signifies no more than this that if the commission of a crime is directly in issue in any proceeding it must be proved beyond reasonable doubt. "The whole doctrine when drawn out is, first, that a person who is charged with a crime must be proved guilty, that according to the ordinary rule of procedure and of legal reasoning *presumitur pro reo*, i.e., *neganti*, so that the accused stands innocent until he is proved guilty; and secondly, that this proof of guilt must, displace all

CHARGE—contd.

reasonable doubt." In a charge of conspiracy general evidence of the existence of the conspiracy may first be given, before particular facts are proved to show that one or more of the accused took part in it. *R. v. Sidney*, 9 St. Tr. 817, *Queen Caroline's Case*, 2 B. & B. 284; 1 St. Tr. N. S. 1348, *R. v. Hunt*, 3 B. & Ald. 566, followed. Under the law in England facts similar, but not part of the same transaction as the main fact, are not in general admissible to prove either the occurrence of the main fact or the identity of its author except (after evidence *aliunde* on these points has been given) to show the state of mind of the parties with regard to such fact, i.e., knowledge of its nature, or his intent. In general, whenever it is necessary to rebut even by anticipation, the defence of accident, mistake or other innocent condition of mind, evidence that the accused has been concerned in a systematic course of conduct of the same specific kind as, and proximate in point of time to that in question, may be given. *R. v. Holt*, (1860) Bell. 280; 8 Cox. 411, to the contrary is no longer authority. *R. v. Smith*, 20 Cox. 804; 92 L. T. 208, and *Emperor v. Debendra Prosad*, I. L. R. 36 Calc. 573; 9 C. L. J. 610, referred to. Section 4 of Act VI of 1908 substantially reproduces the provisions of section 3 of 46 and 47 Vict. Chap. 3 (Explosive Substances Act, 1883), consequently the expression "unlawfully and maliciously" may be interpreted in the sense in which it is familiarly used in the criminal law of England. "Unlawfully" thus signifies "not for a lawful object," and "maliciously" signifies "intentionally and without justification or excuse or claim of right." *The Queen v. Clemens*, [1898] 1 Q. B. 556; 19 Cox. 18, *Miles v. Hutchins*, [1903] 2 K. B. 714; 20 Cox. 555, referred to. *Reg. v. Ward*, 12 Cox. 123; 1 C. C. R. 356, *McPherson v. Daniels*, 10 B. & C. 272, *Bromage v. Prosser*, 4 B. & C. 247, *Clark v. Molyneux*, 3 Q. B. D. 237, *Allen v. Flood*, [1898] A. C. 1, *Johnson v. Emerson*, L. R. 6 Ex. Ch. 373, *R. v. Pemberton*, 2 C. C. R. 119; 12 Cox. 607, *Mogul Steamship Co. v. McGregor*, [1892] A. C. 25; 23 Q. B. D. 598, followed. The term "explosive substance" as used in section 4 (b) of Act VI of 1908 includes any part of an apparatus, machine, or implement intended to be used or adapted for causing or aiding in causing any explosive substance, and "by means thereof" does not mean by means thereof alone. *R. v. Charles*, 17 Cox. 499, referred to. The inference of fact may legitimately be drawn that the "explosive substances" made and possessed by Sasanka were intended for use in British India. It is the duty of the prosecution, not so much to secure a conviction as to place all the available evidence in the case fairly and fully before the tribunal by which alone the guilt or innocence of the accused is to be determined. *Ram Ranjan Roy v. King-Emperor*, I. L. R. 42 Calc. 422; 19 C. W. N. 28, following *Regina v. Holden*, 8 C. & P. 606, referred to. The proof of the case against the prisoner must depend for its support not upon the absence or want of any explanation on the part of the prisoner, but upon the positive affirmative evidence of his guilt that

CHARGE—contd

is given by the Crown " But "if there is a certain appearance made out against a party, if he is involved by the evidence in a state of considerable suspicion, he is called upon for his own sake and his own safety, to state and to bring forward the circumstances, whatever they may be, which might reconcile such suspicious appearances with perfect innocence" *Rigina v Frost, 4 St Tr N S 55*, followed. While it is not necessary to prove manual possession of the explosive substance by the accused, it must be proved that it was in his power or control possession to be punishable must also be possession with knowledge and assent. The mere fact that the other accused were in the room does not show they were in possession of all or any of the things contained therein. When the evidence at the disposal of the prosecution is insufficient to secure a conviction for the crime committed, it is inexpedient, even though it may be lawful, to prosecute the accused for a conspiracy the proof whereof really rests on the establishment of that very crime. *Reg v Boulton 12 Cox 37*, and *Emperor v Lalit Mohan, 1 L R 38 Cal 559*, 15 C B N 593, referred to. A man a guilt is to be established by proof of the facts alleged and not by proof of his character, such evidence might create a prejudice but not lead a step towards substantiation of guilt. In India, as in England, the accused are entitled in cross-examination to elicit facts in support of their defence from the prosecution witnesses wholly unconnected with the examination in chief. In the course of cross-examination of this character the defence are entitled, in view of the generality of section 143 of the Indian Evidence Act, to ask leading questions. Under section 154, the Court has the discretion to permit the prosecution to test, by way of cross-examination, the veracity of their own witnesses with regard to the (unconnected) matters elicited by the defence in cross-examination. [While in the United States a party has no right to cross-

quent process of the cause *Philadelphia and Trenton Railway Co v Stimpson, 11 Peter 418*, referred to.] The defence is not entitled to elicit from individual prosecution witnesses whether he was a spy or an informer, or to discover from police officials the names of persons from whom they had received information, but a detective cannot refuse, on grounds of public policy, to answer a question as to where he was secreted. *R v Watson, 32 St Tr 1, 1 R v Richardson, 3 Fox & Fen 693*, 1 G v Bryant, 15 M & W 169, 71 L R 610. *Marla v Beifus, 25 Q B D 491*, *Hobbs v Catchlove, 3 T L R 159*, referred to. In strictness carrying out the provisions of section 360 (1) of the Criminal Procedure Code by the daily reading out in open Court of the deposition of each witness, the Court does not lay itself open to criticism, though that procedure should occupy considerable time. *Mohendra Nath v Emperor, 12 C B N 515*.

CHARGE—concld

once with the universal practice in the Courts under the Calcutta High Court, they do not take the place of evidence nor of such examination of the accused as is contemplated by section 312 of the Code of Criminal Procedure. *Emperor v Ananya, (1903) All N L J*, disented from. *ASHITA LAL HAZRA v EMPEROR (1915)*. 1 L R. 42 Cal. 957

2. Innuity—Charge on movable as well as immovable property—Sale of property charged in separate lots—Notice of charge to

to the charge even in execution of a decree for arrears of the annuity. *Sahib Mirza v Linda Khanam, 1 L R 19 Cal 411*, followed. Where, however an annuitant, in execution of a decree which he had obtained for arrears of an annuity, attached and sold part of such movable property without notice of the charge and the nature of the property was such that it was of no particular value apart from other property which was sold separately. *Held* that such part must be taken to have been sold free of the charge. *GANNON v BABU RAM (1914)*. 1 L R. 37 All. 72

CHARTER ACT (24 & 25 VICT. C. 104).

— cl. 15—

See JURISDICTION

1 L R. 42 Cal. 926

See MADRAS CITY MUNICIPAL ACT (III OF 1904)

1 L R. 38 Mad. 581

CHARTER OF THE SUPREME COURT, 1774.

— cl. 28—

See ARREST OF SUII

1 L R. 42 Cal. 85

CHATELS.

See PALMS OF TREES OF WOODS

1 L R. 42 Cal. 455

CHAUKIDARI CHAKRAN LANDS.

1. Village Chakridari Act (Beng VI of 1870), s 1, 48, 49, 50, 51, 52, 53—Power of resumption or attachment of chakridari chakran lands—Zamindari codes in Orissa—Regulation XII of 1803 s 33—Regulation XIII of 1803, s 41—Regulation I of 1793, s 5, cl (4)—

that the Government were, under the circumstances, not entitled to resume and assess with revenue, as being chakridari chakran lands within the meaning of the Village Chakridari Act (Beng VI

CHAUKIDARI CHAKRAN LANDS—*contd.*

Act VI of 1870) certain lands forming part of the estates of the respondents (the zamindars of Sukinda and Madhupur) in Orissa, with whose ancestors settlements had been made in 1803, and sanads granted by which statutory confirmation was given by section 33 of Bengal Regulation XII of 1805, and in respect of which estates the revenue was settled in perpetuity. The history of chaukidari grants as set out in the judgment of Lord Kingsdown in the case of *Joykishen Mookerjee v. Collector of East Burdwan*, 10 Moo. I. A. 16, referred to. The respondents in discharge of the duties imposed on them by their sanads to maintain peace and order within their estates (the manner in which they were to carry out such duties being impliedly left by the Government to the zamindars, as there was no machinery provided for the purpose in the legislation previous to 1870) retained in their service a large number of chaukidars whom, according to the custom of the country, they remunerated by grants of land in lieu of wages. A register of these chaukidars was kept in the zamindari office, and in the appointment of the chaukidars, in more than one instance, the Government Police Officer had a voice. But the records showed that the zamindars often changed the lands held by these men, and resumed what they considered to be in excess of their requirements. Bengal Act VI of 1870 was extended to Orissa in 1879. In suits by the respondents against the Secretary of State for a declaration that the Act did not apply to the lands in question: *Held* that the onus was on the appellants to show that when the zamindaries were confirmed to the respondents' ancestors, such confirmation was subject to reservations in respect of any land which gave the Government the power of resuming and assessing it, and that onus had not been discharged. The power of resumption was reserved by Government in the old Regulations in respect of lands which had been set apart by the zamindar with their permission or under their authority. In Regulation I of 1793 the word used is "appropriated"; in Regulation XIII of 1805 the expression "assigned" is employed: but in both statutes the characteristics of the grants under which the lands were held depended on the implied authorisation of the Government, which excluded them from consideration in the adjustment of the jama of the mahal. In the present cases the appellant had failed to show that any parcel of land was not taken into account in fixing the rent respectively payable by the respondents, nor that there was any obligation on the part of the respondents to make such grants. The only obligation on them was to maintain peace and order within their zamindaries. They entertained the services of chaukidars for whose maintenance they allotted from time to time certain lands of their own free will. The mere fact that some appointments were made with the approval of a Government official could not alter the nature of the grants. The word "assigned" in the definition section of Bengal Act VI of 1870 means land assigned by Government, or appropriated under their authority or with their permission.

CHAUKIDARI CHAKRAN LANDS—*concl'd.*

Not only did the form of the "transferring order" in Schedule C of the Act clearly show that the expression "assigned" is applied to lands assigned by Government for the maintenance of the chaukidars, and in respect of which they reserved the right to resume and transfer to the zamindar subject to an additional assessment, but the resolution by which the Act was extended to Orissa leaves no possibility of doubt what the Government understood the Act to mean. In the orders passed a distinction is made with regard to chaukidari holdings in the temporarily-settled tracts and those situated in "permanently-settled estates." With regard to these it is declared that on resumption "the holdings should be included in the estates within which they lie, and form part of its assets in the future." Nothing can be clearer that the Act was designed to deal with lands which, although lying within a mahal, did not form part of its assets, which was not the case with the respondents' zamindaries. *SECRETARY OF STATE FOR INDIA v. KIRTIBAS BHUPATI HARICHANDAN MAHAPATRA* (1914)

I. L. R. 42 Calc. 710

2. — *Suit for khas possession—Chaukidari chakran lands—Resumption by Government and settlement with private individual—Holding over by tenant without settlement from such private individual.* The plaintiffs sued to obtain khas possession of three plots of land and for damages and in the alternative for a decree declaring that the defendants were bound to pay rent and for assessment of adequate rent. The lands in suit were formerly chakran lands which were resumed by Government and settled with plaintiff's vendor on 7th September 1898. The plaintiff obtained his title to the lands by purchase of his vendor's interest at an auction sale in execution of a decree in 1907 or 1908. The defendants who held the lands as chaukidari chakran lands at the time of the resumption continued to hold them ever since without taking any settlement either from the plaintiff's vendor or the plaintiff. In 1902 the plaintiff's vendor sued the defendants in the Small Cause Court for compensation for use and occupation and obtained decrees against them. The plaintiff brought his suit on the 10th September 1909. *Held*, that once the chakran lands were resumed and settled with the plaintiff's predecessor the latter had the right to take khas possession of the lands and the mere omission of the plaintiff's predecessor and of the plaintiff after him to assert that right would not amount to acquiescence on the part of the plaintiff which would alter the status of the defendants from that of trespassers to that of tenants and the plaintiff was entitled to bring his suit within 12 years from the date of resumption by Government and settlement with the plaintiff's vendor. *RAJ KRISHNA RUDRA v. PHAKIR DOME* (1913)

19 C. W. N. 478

CHEQUE, PAYMENT BY.

— *Effect of such payment—Part-payment—Limitation—Limitation Act (IX of 1908), s. 20—Continuous account.* If a

CHEQUE, PAYMENT BY—*concl'd.*

cheque is delivered to a payee by way of payment and is received as such, it operates as a payment subject to a condition subsequent that if upon due presentation the cheque is not paid, the original debt revives. Where such a cheque is signed by the debtor and paid in part payment of the principal

cause of action. *Bonsey v. Wordsworth*, 18 C. B. 325, followed. *KEDAR NATH MITRA v. DINABANDHU SAHA* (1915). I. L. R. 42 Calc. 1043

CHOTA NAOPUR ENCUMBERED ESTATES ACT (BENO. VI OF 1878).

s. 3—*Deed of release executed by disqualified proprietor.* A deed of release executed

not a case of a merely voidable agreement. An admission to that effect in a *chhar sanad* (which did not operate as an alienation) granted by the disqualified proprietor did not bind the estate even as an admission. *BISWANATH GORAIN v. SUBENDRA MOHAN GHOSH* (1913). 19 C. W. N. 102

s. 17—

See PATNI LEASE.

I. L. R. 42 Calc. 1029

CHOTA NAOPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879).

V of 1905, O. VI, r. 18—*Decree, if should be amended—Remand order directing trial by specific Court—Another Court having jurisdiction, if may try.* Where in a suit for rent governed by the Chota Nagpur Landlord and Tenant Procedure Act of 1879 the plaintiff did not specify correctly the property in respect of which the rent was due as required by s. 47 of the Act, and the sale proclamation issued in execution of the decree passed in the suit (which by force of s. 5 of the Bengal Rent Recovery Act of 1865 would specify the property in the words of the plaintiff) was in conse-

mit a correct description, and further that the "Court that tried the original suit" should adjudicate upon the matter in case of controversy, but on remand, the Deputy Commissioner, and not the

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENO. I OF 1879)—*concl'd.***s. 47—***concl'd.*

Deputy Collector who tried the original suit, caused the plaint to be amended on the 17th May 1913;

code
the
ade
order that certain steps should be taken by the parties to enable the differences between them to be properly settled, and the amendment made was not

case was under the general law, under the special provisions of s. 5 of the Rent Recovery Act there was no necessity for amending the decree. *MADAN MOHAN NATH SAHAI v. PRATAP UDAI NATH SAHAI DEO* (1914). 19 C. W. N. 200

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).

Deed containing the name of a certain person as the holder of a tenure is not equivalent to registration in the office of the landlord of the transfer of the tenure to that person as contemplated by s. 11 of the Chota Nagpur Tenancy Act. *ANANT GHOSH v. CHITRU PATRA* (1914)

19 C. W. N. 461

s. 20 (3), 139 (6)—*Occupancy right acquired before Act, if affected.* When a suit relates to agricultural lands and is instituted by the headman of a village in his character as headman, cl. (6) of s. 139 of the Chota Nagpur Tenancy Act operates as a bar. Section 20, cl. (3), of the Chota Nagpur Tenancy Act of 1908 does not affect occupancy rights acquired before that Act came into force. Under Act X of 1859 which applied in 1867 when the land in suit was reclaimed, occupancy right could be acquired by rayats who occupied the land for a period of 12 years, cultivated the same and paid rent therefor as rayats. *DRAGU PRASAD SINGH v. HARI RAM MAHATO* (1914)

19 C. W. N. 578

s. 57, 258, 265 (viii)—*Judicial Commissioner hearing appeals in cases under s. 57, of Revenue Officers—Order not modifiable by suit in Civil Court—Order to what extent res judicata—* Civil Procedure Code (Act V of 1908), s. 11. R having been entered in the record of rights (prepared under s. 53 of the Chota Nagpur Tenancy Act) holding Pargana Barway as a jagir descendible to children, the Maharaja of Chota Nagpur used

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)—concl'd.**s. 87—concl'd.**

him under s. 87 to have the entry amended and altered to a life-jagir. The Revenue Officer dismissed the suit, but it was decreed by the Judicial Commissioner who had been appointed by the Local Government under s. 264 (viii) of the Act as Special Officer for hearing appeals from decisions of Revenue Officers under s. 87 of the Act. R thereafter brought this suit against the Maharaja in the Civil Court for a declaration that Pargana Barway was the hereditary impartible estate of the family of the plaintiff: *Held*, that the Judicial Commissioner by virtue of his appointment under s. 264 (viii) performed the functions of a "Revenue Officer" within the meaning of s. 258 of the Act in disposing of appeals from decisions of Revenue Officers under s. 87. That a simple declaration of the nature of the tenure was within the competence of a Revenue Court acting under s. 87 of the Act and therefore the decision of the Judicial Commissioner was a bar to the trial of the present suit which was a suit only for such a declaration. That although R could not seek to vary or set aside the order of the Revenue Court under s. 87, he could, being in possession, defend his title in a suit for resumption of the tenure brought by the Maharaja. **GANESH NARAIN SAHI DEO v. PROTAP UDAI NATH SAHI DEO (1915)**

19 C. W. N. 998**CHUKANI RIGHT.**

Contract of sale of a chukani tenure—Misrepresentation by non-disclosure of facts—Suit for rescission by purchaser—Transfer of Property Act (IV of 1882), s. 55—Duty of seller. A *chukani* tenure in the District of Rungpur is not a temporary tenure under the Transfer of Property Act terminable at six months' notice but a *raiyati* leasehold which may develop into occupancy right. When the vendor is informed by the purchaser of his object in buying certain property and the lease contains covenants which will defeat that object, mere silence will, in equity, be equivalent to misrepresentation. *Flight v. Barton*, 3 My. & K. 282, followed. **JOGENDRA NATH GOSWAMI v. CHANDRA KUMAR MOZUMDAR (1914)**. **I. L. R. 42 Calc. 28**

CHUR LAND.

Thak and Survey maps—Consent decree in previous suit—Decree not inter partes—Constructive possession of owner of submerged lands during diluvion—Adverse possession—Limitation. The plaintiffs sued for declaration of their title to certain Chur lands which they alleged were partly reformations on the site of and partly accretions to three Mauzas. The Churs were measured in the course of Thak proceedings in the year 1859 and were subsequently measured by way of survey during the following year. The plaintiffs based their title to the disputed land on the Thak map of 1859, the Survey map of 1860, and a consent decree passed in 1879 in a suit instituted by the predecessors-in-interest of the plaintiffs against persons represented by the

CHUR LAND—concl'd.

defendants in consequence of a dispute about the possession of some of the lands of these Churs. *Held*, on the evidence, that the consent decree was as binding on the parties as a decree after a contentious trial, but it cannot have greater validity than the compromise itself: *Held*, on the evidence, that the proceedings in the suit of 1879 were not *bonâ fide*; that the compromise was entered into without authority from the defendants, and that it was not established that the defendants, even though apprised of the compromise, had acquiesced in it. That the rights of property as between two parties cannot be affected by a map drawn for a different purpose—a purpose not relevant to the subject of the dispute between them. That the location of the boundary in the map prepared in the suit of 1879 could not be treated as conclusive between the parties for the purposes of the present controversy, inasmuch as it was not necessary for the disposal of that suit and was outside its scope. *Kerr v. Nuzzur Mahamed*, 2 W. R. P. C. 28, *Kanto Prashad v. Jagat Chandra*, I. L. R. 23 Calc. 335, *Ranjit Sinha v. Basanta Kumar*, 9 C. L. J. 597, *Preo Nath v. Durga Tarini*, 14 C. L. J. 578, and *Shib Churn v. Nil Kantha*, 17 C. L. J. 642, relied on. No hard and fast rule can be laid down that a Survey map is more reliable than a Thak map. The true principle is that the map which more clearly agrees with the local land-marks is the one that should be followed. That as the Thak map was made in the presence of the parties or their agents, it was *primâ facie* binding on them and in the circumstances of the present case the decree should be based not on the Survey map but on the Thak map after it has been relaid with as much accuracy as practicable. That as the rightful owners must be deemed in law to have been in possession of the submerged lands during the period of diluvion, for the purpose of deciding the question of limitation, the only point for investigation was the period of time when the lands re-appeared and became fit for occupation; and as the possession of the defendants after reformation of the disputed lands did not extend over the statutory period, the claim of the plaintiffs was not barred by limitation in respect of lands which lay within the Thak boundaries of their Churs. That as regards the plaintiffs' claim by adverse possession to land lying beyond the Thak boundaries of their Churs, the plaintiffs were bound to establish in respect of specific parcels of land that they have been in occupation thereof to the exclusion of the rightful owner continuously for a period of twelve years, for the theory of constructive possession is applied only in favour of a rightful owner and is not extended in favour of a wrong-doer whose possession is treated as confined to land of which he is actually in possession. **AMRITA SUNDARI DEBI v. SERAJ-UDDIN AHMED (1914)**. **19 C. W. N. 565**

CIVIL AND REVENUE COURTS.**jurisdiction of—**

See AGRA TENANCY ACT (II of 1901), ss. 4 AND 19. **I. L. R. 37 All. 280**

CIVIL AND REVENUE COURTS—concl'd.

See AGRA TENANCY ACT (II OF 1901), s. 95
I. L. R. 37 All. 223

See AGRA TENANCY ACT (II OF 1901),
ss. 95 AND 167 I. L. R. 37 All. 41

See AGRA TENANCY ACT (II OF 1901),
s. 167 I. L. R. 37 All. 254

CIVIL COURT.

See PENSIONS ACT (XXIII OF 1871), ss. 4,
5, 6 I. L. R. 37 All. 338

CIVIL COURTS ACT (XII OF 1887).

ss. 8, sub-s. (2), 22, sub-s. (2)—

See TRANSFER I. L. R. 42 Calc. 842

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

it to the defendants Held, that the attachment
must be presumed to have subverted and the gift
was void DAUD ALI v RAM PRASAD (1915)

I. L. R. 37 All. 542

ss. 13, 244—

See RES JUDICATA

I. L. R. 37 All. 485

s. 37 (a)—

See ATTORNEY I. L. R. 38 Mad. 134

s. 244—

See OCCUPANCY HOLDING

I. L. R. 42 Calc. 172

ss. 317 and 231—

See HINDU LAW—SUCCESSION

I. L. R. 37 All. 545

not be allowed to retain the property as his ex-
clusively and perpetrate a fraud against his co-
decree holders under cover of s. 317 of the Civil
Procedure Code of 1882. The provisions of
s. 317 of the Civil Procedure Code of 1882 were
designed to create some check on the practice of
making what are called *benami* purchases at ex-
ecution sales for the benefit of judgment-debtors and
in no way affect the title of persons otherwise bene-
ficially interested in the purchase *Bodh Singh*
Doodhooia v. Gunes Chander Sen, 12 B. L. R.
317, referred to. *GANGA SAKH v. KESRI* (1915)
19 C. W. N. 1175

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—concl'd

ss. 351 and 357—

See LIMITATION ACT (XV OF 1877), SCH.
II, ART. 179 I. L. R. 38 Bom. 2)

s. 373—Legal representative—Abatement
of suit—Withdrawal of suit with permission to

allowed by law and when the plaintiff thereupon
withdraws his suit with permission to bring a fresh
one, such a permission can only empower him to
bring a fresh suit against those defendants who
were on the record on the date of the withdrawal
and not against the legal representatives of a de-
fendant who was dead at the time of the withdrawal
and whose said representatives had either not
been brought on the record or had been removed
from the record by an appellate order which set
aside the order of the first court bringing them on
the record *Perumal v. Karuppan*, 21 Mad. L. J.
574, dissented from *SESHAMMA v. SURYANARA-*
YANA (1913) I. L. R. 38 Mad. 643

s. 583—

See ASSIGNMENT OF A MONEY DECREE.

I. L. R. 38 Mad. 38

ss. 628, cl. (b), 629—

See REVIEW I. L. R. 42 Calc. 830

CIVIL PROCEDURE CODE (ACT V OF 1908).

ss. 2 (2), 36, 104—O. XLIII, r. 1

See EXECUTION OF DECREE.

I. L. R. 42 Calc. 440

ss. 2, 97—

I. Preliminary decree—Finding on a preliminary issue whether a
party is an agriculturist—In what cases is the finding
a preliminary decree—*Dekhan Agriculturists' Re-
lief Act* (XIII of 1879), s. 13 The finding on a
preliminary issue, whether a party is or is not an
agriculturist, can be the basis of a preliminary
decree, only when it necessarily involves a con-
clusive determination of the rights of the parties
with regard to the matter in controversy. That
is to say, it is a preliminary decree in those cases
where it necessarily involves the result that the
accounts should be taken under s. 13 of the
Dekhan Agriculturists' Relief Act, 1879, despite
the terms of the contract to the contrary. It is not
a preliminary decree, when there are other questions
yet to be determined before the parties could be
held entitled to have accounts taken under sec.
13 of the Act. MUNICIPAL COMMITTEE OF NARAI
CITY v. THE COLLECTOR OF NARAI (1915)

I. L. R. 39 Bom. 422

2. Preliminary decree—decision that plaintiff can maintain suit if—
Court's refusal to embody its findings in a final
decree—Right of appeal A decision merely to

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 2—concl'd.

ing that the plaintiff's suit is maintainable is not a preliminary decree. It is not an adjudication on "matters in controversy" in the suit. The intention of the Legislature appears to be that there should be only one preliminary decree in the suit to be followed by one final decree. The preliminary decree ascertains what is to be done whilst the final decree states the result achieved by means of the preliminary decree. The cases in which the Legislature contemplated the preparation of a preliminary decree are specified in rr. 12 to 18 of O. XX of the Civil Procedure Code. *Sidha Nath Dhonddeb v. Gonesh Govind*, I. L. R. 37 Bom. 60, dissented from. *Bharut Indu v. Yakub Hasan*, I. L. R. 35 All. 159, referred to. The mere omission on the part of the Court to embody the effect of its judgment in a formal decree would not negative the right of the party affected to prefer an appeal. *KAMINI DEBI v. PROMOTHA NATH MUKERJEE* (1914) 19 C. W. N. 755

ss. 7, 24—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 24 . . I. L. R. 38 Mad. 25

s. 9—Specific Relief Act (I of 1877), s. 12—Suit for declaration that the plaintiff is the Honorary Secretary of an association—Suit maintainable—Jurisdiction. Although the fact that an office is of a purely honorary nature is not by itself sufficient to render a suit respecting such office unmaintainable in a Civil Court, yet where a plaintiff complained of his eviction from the office of secretary to a society which was an honorary office and his continuance wherein depended upon rules which the society had power to alter at any moment, it was held that a Civil Court ought not to entertain a suit for a declaration that the plaintiff had been illegally deprived of such office, inasmuch as such Court could not give any decree in his favour which might not be immediately rendered nugatory by the action of the society. *Chunnu Datt v. Babu Nandan*, I. L. R. 32 All. 527, referred to. *MAHARAJ NARAIN SHEOPURI v. SHASHI SHEKHARESHWAR ROY* (1915) I. L. R. 37 All. 313

s. 10—

See JURISDICTION.

I. L. R. 42 Calc. 926

s. 11—

See ADOPTION . . I. L. R. 37 All. 496

See RES JUDICATA.

I. L. R. 38 Mad. 158

1. ——— Suit for declaration and recovery of possession—Defence of res judicata—Parties not adequately represented in the former suit not fully tried—No bar of res judicata. A suit brought by three plaintiffs as surviving coparceners of a joint Hindu family for a declaration that the property in suit formed part of the joint

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 11—cont'd.

family property and for possession was met by the plea of *res judicata*. The previous suit, the decision in which was set up as *res judicata*, was filed in the year 1909 by the father of the present plaintiffs 2 and 3, who were minors and who were not joined as parties, against the present defendants and the present plaintiff 1 as defendant 4. The relief claimed in that suit was the same as that claimed in the present suit. The finding in that suit showed conclusively that the father of the present plaintiffs 2 and 3, who were then minors and were not parties, did not adequately represent them and the suit was not fully tried and the suit was accordingly dismissed. Held, that the bar of *res judicata* did not arise as the present plaintiffs 2 and 3 were then minors and were not adequately represented. Held, further, that the present plaintiff 1, who was defendant 4 in the former suit, was no more than a *pro forma* defendant and took no active part and was not bound by the result of that suit the decree in which was in his favour. *Raja Rampal Singh v. Ram Ghulam Singh*, L. R. 32 I. A. 17, distinguished. *SUNDRA v. SAKHARAM GOPALSHET* (1914)

I. L. R. 39 Bom. 29

2. ——— Res judicata—Termination of tenancy by decree on prior mortgage. The appellant purchased a plot of land at a sale held in execution of a mortgage-decree. In the mortgage-suit the plaintiff-mortgagee's case was that the tenant-defendants to that suit had taken their tenancies from the mortgagor after the date of the mortgage and the mortgagee prayed for the sale of the property free from the tenancies. The case set up by one of the respondents who was the elder brother of the other respondents was that they held a permanent tenure created prior to the mortgage which was confirmed by a confirmatory lease after the mortgage and that they had erected a masonry building on the land. Issues were framed on this point and the Court found in favour of the plaintiff-mortgagee, and in execution of the mortgage-decree the property was sold free of all encumbrances and purchased by the appellant. Subsequently a portion of the land so purchased by the appellant was acquired under the Land Acquisition Act and the respondents put in a claim for the compensation-money alleging that they had a permanent *mokurari maurasi* interest in the land, the tenancy standing in the name of the elder brother. Held, that the matter was directly in issue in the former suit and decided against the Respondents and they could not open the question again. *KANAI LAL JALAN v. RASIK LAL SADHUKHAN* (1914) 19 C. W. N. 361

3. ——— Res judicata—Partition suit—Plaintiff's share declared and separated by metes and bounds—No proceeding by the defendant to correct errors if any in the apportionment—Subsequent suit by the defendant to correct error if lies—Mistake, suit to set aside decree on

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd

s. 11—contd.

ground of, if lies. If any co-sharer applies for a partition of property, he must make the other co-sharers defendants, because the partition which is made in his favour is a partition against his co-sharers. That which gives him a portion of the property takes away all right which they would otherwise have to that portion, and therefore it is a decree against them and in favour of himself. Where a decree having been made in a suit for partition declaring the shares of the plaintiffs, a Commissioner under the Court's direction went and

of which were taken, the decree was *res judicata*, and a suit instituted by the defendants in the previous suit with a view to correct the apportionment made in favour of the plaintiffs in the previous suit was barred by *res judicata*. *NALINI KANTA LAHRI v. SANYASOYI DEBYA* (1914)

19 C. W. N. 531

4. ————— *Res judicata*—

Munsif's decision if ceases to be res judicata by rise of value of subject matter—*Pro forma* defendant when bound—*Person not joined as executor when bound as such*—*Decree against limited owner upon compromise, when binding on reversion*—*Decree erroneously declared not res judicata, effect of*. To determine, for purposes of *res judicata* whether the Court which decided the former suit had jurisdiction to try the subsequent suit, regard must be had to the jurisdiction of the Court at the date of the former suit and not to its jurisdiction at the date of the subsequent suit. A decree made by a *Munsif* cannot cease to be *res judicata* by reason of a gradual increase in the value of the subject matter of the litigation. If a defendant actively contested the plaintiffs' claim, the decision of the suit will bind him even though he was merely described as a *pro forma* defendant and no relief was asked against him. A defendant who might have been joined both in his personal capacity and in that of an executor to another's estate cannot be treated as having been a party necessarily in his character as an executor when he was not described in the pleadings as such. Where a decision between the parties was considered by the Court and declared not to be *res judicata*, the latter decision even if erroneous in law becomes conclusive between the parties, and it was not open to any of them to plead in a later suit that the former decision still operated as *res judicata*. An adverse decision obtained against a limited owner such as a Hindu daughter, if obtained upon a fair trial, is *res judicata* on the issues decided therein against reversionary heirs. A decree passed on a compromise made *bona fide* for the benefit of the estate and not for the personal advantage of the limited owner has the same effect, and such a decree unless successfully

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd

s. 11—contd.

impeached on the ground of fraud, coercion, collusion or any like reason would operate as *res judicata* against the reversioners. *MOHENDRA NATH BISWAS v. SHAMSUNNESSA KHATUN* (1914)

19 C. W. N. 1280

See *RES JUDICATA* Expl. IV

I. L. R. 37 ALL. 589

s. 11, Expl. IV—

1. ————— *Pusane mortgagee's suit*—*Prior mortgagee made a party, if bound to set up his mortgage in defence*—*Test*—

in which a prior mortgagee was impleaded as

—was the defendant impleaded as a *pusane* mortgagee and therefore a necessary party? *Ibrahim Hussain Khan v. Ambika Pershad*, I L. R. 39 Cal. 527 s. c. 16 C. W. N. 505, referred to. *KRISHNA DOYAL GIR v. SYED MD. AMIRUL HASAN* (1914) 19 C. W. N. 942

2. ————— *Res judicata, plea of*, not taken in written statement, if may be taken on appeal. A plea of *res judicata* not taken in the written statement was allowed to be taken in appeal under O. XXI, r. 2, C. P. C., O. VIII, r. 2.

3. ————— *Subsequent mortgagee who does not appear in prior mortgagee's suit, if may subsequently set up an earlier mortgage paid off by advances upon his mortgage*. A subsequent mortgagee who has been made a party to a suit on a prior mortgage, but who has failed to appear, cannot afterwards raise the plea that he had paid off a prior lien and was therefore in the position of a prior mortgagee. *Krishna Doyal Gir v. Syed Md. Amirul Hasan*, 19 C. W. N. 942, referred to. *Ibrahim Hussain Khan v. Ambika Pershad*, I L. R. 39 Cal. 527 s. c. 16 C. W. N. 505, followed. *HANNAH RAY v. KAMTA PRASAD SARKI* (1915)

19 C. W. N. 947

4. ————— *Delikha typical tenant's Relief Act (X) of 1879, ss. 12 and 13*—*Prior and subsequent mortgages upon the same property*. In the same mortgage to co-purchaser mortgages—*Suit on subsequent mortgage without reference to the prior mortgage*—*Subsequent suit on the prior mortgage*—*Separate cases of action*—*Subsequent suit barred*—*Res judicata*—*Finishing on a matter of*

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 11—*contd.*

fact that the two mortgages had been transactions "out of which the suit has arisen." A mortgagee, who has two mortgages of different dates upon the same property, having sued upon a mortgage of the later date and having had the property sold without reference to the prior mortgage, cannot afterwards bring a suit on the prior mortgage though the causes of action for the two suits are distinct. This rule is not the result of Order II, rule 2 of the Civil Procedure Code (Act V of 1908) but it depends upon the principle of *res judicata*. *Per Hayward, J.* If the two mortgages had been found as a matter of fact to have been transactions "out of which the suit has arisen," the subsequent suit on the prior mortgage would have further been barred in view of the previous suit on the subsequent mortgage by the provisions of Order II, rule 2 of the Code and the special provisions of s. 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). **DHONDO RAMCHANDRA v. BHIKAJI (1914)** I. L. R. 39 Bom. 138

ss. 11 and 13—*Res judicata—Foreign judgment—Effect of decision in British India as to title to part of an estate on a suit filed in Rampur for possession of another portion of the same estate situated there.* Certain claimants of the estate of a deceased person, which was situated partly in the Bareilly district and partly in the State of Rampur, sued in Bareilly to recover the portion situated there, and obtained a decree. Other claimants filed a similar suit in Rampur in respect of the portion situated there. *Held*, on suit by the plaintiffs in the Bareilly Court for a declaration that the judgment of that Court operated as *res judicata* in respect of the suit in Rampur and for an injunction restraining further proceedings in the Rampur Court, that neither relief could be granted. **MAQBUL FATIMA v. AMIR HASAN KHAN (1914)**

I. L. R. 37 All. 1

ss. 11 and 47—Mortgage debt—Suit for recovery by sale of mortgaged property—Decree for payment within six months and in default sale—No further action taken under the decree—Continuance of the relation of mortgagor and mortgagee—Suit by mortgagor for redemption—No bar of sections 11 and 47 of the Civil Procedure Code (Act V of 1908). The defendant in a suit for sale under a mortgage-decree, who is given six months' time to pay the decretal debt and in default the plaintiff to recover the decretal debt by sale of the mortgaged property, is not in a position of a decree-holder who has a decree to execute. His right of payment within six months is a right which he has in mitigation of his liabilities under the decree. If he does not pay within six months and the mortgagee does not apply for decree absolute, the latter does not get rid of the relationship of mortgagor and mortgagee and there is nothing to prevent the mortgagor or his representative from filing a suit for redemption but he cannot go behind the decree in the mortgagee's suit in so far as it settled the amount of the mortgage debt up to the date of

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

s. 11—*concl.*

that decree. Such a suit for redemption is not barred either under section 11 or section 47 of the Civil Procedure Code (Act V of 1908). **RAMA v. BHAGCHAND (1914)** I. L. R. 39 Bom. 41

s. 16—

See JURISDICTION.

I. L. R. 42 Calc. 942

s. 20(c)—Cause of action—Jurisdiction—Suit to set aside a decree on the ground of fraud—Decree obtained in Bengal—Suit filed in Agra. The plaintiff sued in the court of a Munsif in the district of Agra, to set aside on the ground of fraud a decree obtained from a court at Siliguri in Bengal. It was part of the plaintiff's case that the defendant fraudulently prevented the institution of the suit from becoming known to him, by causing the notice of suit to be served on some other person and an incorrect return to be made to the court. The plaintiff further alleged that the defendant had in execution of his decree caused certain property belonging to the plaintiff in the district of Agra to be attached. *Held*, that a material portion of the plaintiff's cause of action arose in the district of Agra and the Munsif had jurisdiction to try the case. **Banke Behari Lal v. Pokhe Ram, I. L. R. 25 All. 48, Nanda Kumar Howladar v. Ram Jibon Howladar, I. L. R. 41 Calc. 990, Radha Raman Shaha v. Pran Nath Roy, I. L. R. 28 Calc. 475, Khagendra Nath Mahata v. Pran Nath Roy, I. L. R. 29 Calc. 395, Thakur Prasad v. Punkal Singh, 8 C. L. J. 485, Abdul Huq Chowdhry v. Abdul Hafiz, 14 C. W. N. 695, referred to. Dan Dayal v. Munna Lal, I. L. R. 36 All. 564, and Kalian Das v. Bakshi Ram, F. A. j. O. No. 14 of 1910, not followed. JAWAHIR v. NEKI RAM (1914)**

I. L. R. 37 All. 189

s. 24—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1904), s. 90.

I. L. R. 38 Mad. 472

Small cause suit instituted in a Subordinate Court—Transfer by the District Judge to District Munsif's Court—Order directing trial as an original suit—Subsequent transfer by the District Judge to another District Munsif's Court—Decree by the latter—Appeal against such decree to the District Court—Transfer of appeal to the Subordinate Court—Decree on appeal by the Subordinate Court—Revision to the High Court—Appeal to the District Court incompetent—Decree of the Subordinate Court set aside as without jurisdiction—Provincial Small Causes Courts Act (IX of 1887), ss. 27, 32, 33, and 35—Small Cause Court—Court invested with powers of a Small Cause Court—Character of Court trying a small cause suit on transfer—Civil Procedure Code (Act V of 1908), ss. 7 and 24. Where a suit, which was instituted as a small cause suit in a Subordinate Judge's Court, was transferred by the District Court to a District

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd

s. 24—contd

Munsif's Court for trial as an original suit, and was again transferred to another District Munsif's Court for trial and disposal. *Held*, that the decree passed by the latter District Munsif's Court was the decree of a Court of Small Causes, and no appeal lay to the District Court against such decree. A Court invested with the powers of a Court of Small Causes is a Court of Small Causes within the meaning of s. 24 of the Code of Civil Procedure (Act V of 1908), though the suit was not transferred to such Court immediately from a Court of Small Causes. **SANKARARAYA v. PADMANABHA** (1912)

I. L. R. 38 Mad. 25

ss. 42, 145, 104 (h)—Surety for judgment debtor imprisoned in execution of decree—Appeal Where a person who stood surety for the

to appeal under ss. 42 and 145 of the Civil Procedure Code, the provisions of s. 104, cl. (h), of the Code notwithstanding. **ADHAN CHANDRA GORE v. PULIN CHANDRA SHARMA** (1914)

19 C. W. N. 1085

s. 47—Execution proceedings, orders in, when appealable—Order for delivery of possession to decree holder auction purchaser, if appealable. Whether an order in execution proceedings is within the scope of s. 47, C. P. C., depends upon its nature and contents. An order for delivery of possession to the execution purchaser was not an order relating to execution, discharge or satisfaction of the decree, nor was such an order one arising between the parties to the suit or their representatives merely because the decree holder happened to be the execution purchaser. **SASI BHUSAN MOOKERJEE v. RADHA NATH BOSE** (1914)

19 C. W. N. 835

s. 47, O. XXI, r. 50, cl. (b), (c), O. XXX, rr. 5 and 8—Execution of decree against firm—Admission of partnership in pleadings—Service of summons individually as partner—Absence of notice with summons as to capacity of person served, effect of—Procedure for person not a partner but served individually as such—O. V, r. 17—Service of summons on defendant's refusal to accept it s. 47—Order by Court executing decree against firm obtained from another Court calling upon persons found to be partners to show cause against execution, if a decree and if appealable. A decree was obtained in the High Court against a firm the names of the partners of which were not disclosed. Execution was sought against three persons who were alleged to have been partners of the firm and the Court of the District Judge to which the decree was sent for execution held that one of them was not proved to be a partner and issued notice against the appellants only under O. XXI, r. 22, requiring them to show cause why the decree should not be executed

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd

s. 47—contd

against them. Against this order the appellants preferred an appeal to the High Court. It appeared that in the suit one of the appellants admitted in his written statement that he was a partner and the other appellant did not appear. The plaintiff had taken out summons against the latter for service in accordance with cl. (a) of r. 3 of O. XXX. The summons which was not accompanied by any written notice in terms of r. 5, O. XXX,

of business of the firm. *Held*, that the order of the District Judge was plainly a final order made under s. 47, C. P. C., and was essentially a decree as it determined a question relating to the rights and liabilities of the parties with reference to the relief granted by the decree and the order was appealable. The fact that it was open to the judgment-debtors to avail themselves of the provision of sub r. 1 of r. 40 of O. XXI did not alter the nature of the order. That the case of the Appellant who admitted partnership in his written

of cl. (c) sub r. 1 of r. 50, O. XXI, and he could not rely on any representation alleged to have been made to him as regards his capacity by the agent of the decreeholder at the time of service of summons and the decree holder was entitled to proceed with execution against him. That the service of the summons by posting it on the outer door of the premises of the firm on the refusal of the appellant to grant a receipt was clearly in accordance with r. 17 of O. V, which has in this respect altered the procedure laid down in s. 60 of the Code of 1852. That under r. 5 of O. XXX in the absence of a notice in writing as to the capacity of the person on whom summons is served, the person served shall be deemed to be served as a partner and the only method by which a person so served with summons can contest his liability as a partner is by appearing under protest in accordance with r. 8. **BAISNAN CHAKRABARTY v. BANK OF BENGALEE** (1914)

19 C. W. N. 1008

s. 47, O. XXI, rr. 58, 60—

See EXECUTION OF DECREE—SHERAIT
I. L. R. 42 Cal. 440

s. 47, O. XXI, rr. 58, 60—Decree for money—Execution against representative of judgment-debtor—Objection that property not assets left by judgment-debtor, but object a personal property—Claim whether to be determined under s. 47, O. XXI, r. 60. When A in execution of a decree for money against Y proceeds against Z, as the legal representative of Y, in respect of property in the

CIVIL PROCEDURE CODE (ACT V OF 1908)— contd.

s. 47—contd.

possession of Z and Z contends that the property belongs to him and never formed part of the estate of Y, the question which arises is whether such property is assets in the hands of Z and is liable to be seized in execution of the decree against Y and one for determination by the executing Court under s. 47 of the Civil Procedure Code. *Per MOOKERJEE, J.*—The Full Bench decision in *Panchanan v. Rabia Bibi, I. L. R. 17 Calc. 711*, is in no way affected by the decision of the later Full Bench in *Kartick Chandra Ghose v. Ashutosh Dhara, I. L. R. 39 Calc. 298 : s. c. 16 C. W. N. 26. AJO KOER v. GORAK NATH (1914)*

19 C. W. N. 517

ss. 47 and 50, O. XXI, r. 90—*Transfer of decree to another Court—Judgment-debtor, death of—Application to bring in legal representatives—Jurisdiction of such Court—Minor legal representative—Guardian ad litem, not appointed—Sale in execution—Decree-holder and auction-purchaser, fraud of—Sale, validity of—Application under O. XXI, r. 90—Conversion into a suit—Suit for setting aside, if necessary—Limitation Act (IX of 1908), Arts. 12, 95 and 166—Suit for other reliefs on the ground of fraud, if maintainable.* The first defendant obtained decrees in two suits, viz., Original Suits Nos. 555 and 559 of 1903 on the file of the District Munsif's Court of Vizianagram against one S, the husband of the plaintiff and the second defendant. S died subsequent to the passing of the decrees, which were transferred to the District Munsif's Court of Rajam for execution. The first defendant filed an application in the latter Court for bringing on the record the plaintiff and the second defendant as the legal representatives of the deceased judgment-debtor and for execution of the decrees. The Court passed an order as prayed for. The plaintiff (the junior widow of S) was a minor at the time of the application and sale, but she was placed on the record as though she were a major without a guardian *ad litem* to act for her, though both the first defendant (the decree-holder) and the third defendant (the auction-purchaser) knew at the time that she was a minor. The second defendant (the co-widow) had then ceased to have any interest in her husband's estate. The decree-holder applied for sale in Original Suit No. 555 of 1903 of properties which were attached in both the aforesaid decrees. The third defendant, who bid for the properties for Rs. 601, caused the sale to be stopped in Original Suit No. 555 of 1903; the first defendant in collusion with the third defendant brought them to sale in Original Suit No. 559 of 1903, the reserve price was reduced to Rs. 200 and the third defendant purchased the property for Rs. 301; the executing Court was not informed of the sale in Original Suit No. 555 of 1903 and of the third defendant's bid for Rs. 601 therein. The sale was held on 19th October 1906 and was confirmed on 23rd January 1907. The plaintiff (who attained majority in July 1907) filed an application on the 16th

CIVIL PROCEDURE CODE (ACT V OF 1908)— contd.

s. 47—concl.

March 1909 in Original Suit No. 559 of 1903 under s. 47 of the Code of Civil Procedure for setting aside the sale and for a declaration that the sale was invalid and for other reliefs. The petition was converted into a suit under the provisions of s. 47 of the Civil Procedure Code. The defendants contended that the sale was valid, that in any event the sale had to be set aside, and that both the application under s. 47 of the Civil Procedure Code and the suit were barred by limitation under arts. 162 and 12 of the Limitation Act respectively. *Held*, that the plaintiff who had no guardian *ad litem* appointed for her in the execution proceedings was not a party to the suit in which the sale was made, and was entitled to bring a suit for a declaration that the sale was not binding without regard to the provisions of s. 47 of the Civil Procedure Code. That the plaintiff not having been a party to the suit and not having been sufficiently represented by any one who was a party, the sale was not binding on the plaintiff and did not require to be set aside. That the suit which was instituted within three years of the plaintiff's attainment of majority was not barred by limitation. *Per SADASIVA AYYAR, J.* When a judgment-debtor has to set aside a sale of his property for fraud of the decree-holder or of both himself and the auction-purchaser, he can only apply under Order XXI, rule 90 of the Civil Procedure Code, subject to the limitation prescribed in art. 166 of the Limitation Act; but he may be entitled to bring a suit for other appropriate reliefs on the ground of fraud against the decree-holder and the auction-purchaser, such as for damages or for injunction, subject to the limitation prescribed in art. 95 of the Limitation Act. *PAYIDANNA v. LAKSHMINARASAMMA (1914)*

I. L. R. 38 Mad. 1076

ss. 47, 73—

See RATEABLE DISTRIBUTION.

I. L. R. 42 Calc. 1

s. 48—

1. ———— Civil Procedure Code (Act XIV of 1882), s. 230—Limitation Act (IX of 1908), Art. 182—Decree upon a compromise—Payment by instalments—Default—Execution—Minority of the legal representatives of the judgment-creditor—Step in aid of execution—Execution barred by the lapse of twelve years. An instalment decree upon a compromise provided that upon default the judgment-creditor was entitled to possession of certain property. The decree was dated the 29th July 1884 and default in the payment of instalment was made in 1892. Thereupon the judgment-creditor applied for the execution of the decree. He died in 1898 and the execution proceedings were continued by his brother as his representative. In March 1902 the brother also died, leaving minor sons. On the 27th June 1902 the guardian or the next friend of the minors applied to have the minors brought on the record as

CIVIL PROCEDURE CODE (ACT V OF 1908)—

—*concl.*s. 48—*concl.*

Circuit of Decree—

September 1909 a fresh application to execute the original decree was presented by the minor sons of

from the date of the default mentioned in the consent decree sought to be executed, it was barred by s. 48 of the Civil Procedure Code (Act V of 1908). *Held*, that the fresh application was time barred as being made twelve years after the date of the default. Art. 182 of the Limitation Act (IX of 1908) showed that the fresh periods which could be obtained under the provisions of that article did not escape the provisions of s. 48 of the Civil Procedure Code (Act V of 1908). S. 48 of the Civil Procedure Code (Act V of 1908) is more extensive in its application than s. 230 of the Code of 1882 and it is wide enough to cover the compromise decree of which execution was sought. BALA RAM VITHALCHAND & MARUTI (1914)

I. L. R. 39 Bom. 256

2. — *Decree in favour of minors—Application for execution twelve years after date of decree—Limitation Act (IX of 1908), s. 6* S. 6 of the Indian Limitation Act, 1908, only refers to periods of limitation prescribed by the Act itself and has no application to a case where the decree is barred by the provisions of s. 48 of the Code of Civil Procedure, 1908. *Minority*, therefore, is not a ground of exemption from the operation of limitation provided for by s. 48 of the Code of Civil Procedure. *Moro Dadashie v. Vissay Raghunath* I. L. R. 16 Bom. 536, dissented from. *Jhandu v. Mowan Lal, Pury Rec (1894) 189*, and *Ramana Reddi v. Babu Reddi*, I. L. R. 37 Mad 186, followed. *PREM NATH TEWARI v. CHATARPAL MAN TEWARI* (1915)

I. L. R. 37 All. 833

3. — “Fraud or force of one judgment debtor, not extending the twelve years as against others.” The fraud or force of one of several judgment debtors in preventing execution against him of a decree enables the decree holder

to execute the decree against the other debtors provided

3. 80—Permanent tenancy, with condition of forfeiture on transfer—Holding saleable in execution. The word “saleable” in s. 60 of the

CIVIL PROCEDURE CODE (ACT V OF 1908)

—*concl.*s. 60—*concl.*

Civil Procedure Code means saleable by auction at a compulsory sale under the orders of the Court and not transferable by act of parties. Where in a permanent lease there was a condition that the landlord would re-enter if the tenant made any

MANIK & ALAKH DAS JINDAL vs. ...
19 C. W. N. 1182

ss. 68 and 70—Sch. III—Exemption of a decree by Collector—Delegation to Assistant Collector of functions of Collector—Application to Assistant Collector to take action—*Utre Viree—Penal Code (Act XLV of 1860), s. 123.* A obtained a decree for money against B. In execution there of certain immovable property was ordered to be sold and the execution was transferred to the Collector of Basti under s. 68 of the Code of Civil Procedure. The property was sold and purchased by C. B applied for permission to deposit the sum decreed and 5 per cent. of the purchase money. He next presented a petition saying that he had made the required deposit. Subsequently he put in a petition to the effect that some unauthorized person had paid the money into the Treasury, and that he had been compelled to put his thumb impression on a blank paper which was used for the petition aforesaid. This petition was presented to the Assistant Collector and the officer ordered B's prosecution under s. 182, Indian Penal Code. *Held*, that inasmuch as the Assistant Collector had no power to deal with B's applications except by passing them on to the Collector, s. 182 of the Indian Penal Code did not apply and the Assistant Collector had no jurisdiction to order B to be prosecuted thereunder. *EXTERIOR v. BHARAT TEWARI* (1915)

I. L. R. 37 All. 334

s. 73—

See CO-OPERATIVE SOCIETY.

I. L. R. 42 Cal. 377

See RATEABLE DISTRIBUTION.

I. L. R. 38 Mad. 221

Evidence Act (I of 1872), s. 165—Examination of judgment-debtor without notice to parties after the close of case and before delivery of judgment. The petitioner obtained a decree for money against one H and his brothers. Previous to the petitioner's decree the opposite party had obtained a decree against the same judgment-debtors. In the execution proceedings commenced by the petitioner there was an application for rateable distribution by the opposite party and in the proceedings for execution commenced by the opposite party there was an application for rateable distribution by the petitioner. The opposite party, however,

**CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.****s. 73—contd.**

objected to the application for rateable distribution by the petitioner, on the allegation that the decree obtained by the latter was fraudulent. The Subordinate Judge held a summary enquiry into the matter and allowed the opposite party's objection. It appeared that in the enquiry, after evidence on both sides was adduced and arguments addressed to the Court, judgment was reserved. Thereafter the Court examined the judgment-debtor H without notice to the pleaders for the parties and relied on his statements in passing the final order: *Held*, that the Subordinate Judge had jurisdiction to hold a summary enquiry into the matter, but the examination of H should not have taken place without notice to the parties or their pleaders and without any opportunity afforded to them to cross-examine him or to rebut his statements. S. 165 of the Evidence Act does not justify the procedure adopted by the Judge. **PEARY LAL DAS v. PEARY LAL DAWN (1913)**

19 C. W. N. 903

2. *Surplus sale-proceeds, distribution amongst attaching creditors—Money standing to the credit of one suit, application for transfer to another suit, if to be made in former—Practice—Certificates of Accountant-General and Registrar, Original Side, required with application.* Where money in Court stands to the credit of one suit and the plaintiff in another suit has, by reason of being an attaching creditor or mortgagee or otherwise, an interest in such money and desires the fund to be transferred to the credit of his suit in order to be dealt with therein, he should in all cases make the application in the suit to whose credit the money stands for the transfer. In an application on the Original Side of the High Court for the transfer and rateable distribution of funds to which the provisions of s. 73 (1), cl. (c), of the Code of Civil Procedure (Act V of 1908) may possibly apply, the applicant should be required to produce, in addition to the certificate of the Accountant-General, a certificate of the Registrar. **KUMAR KRISHNA MITTER v. AMULYA CHARAN MITTER (1915)**

s. 73, O. XXI, r. 89—

Execution sale set aside by deposit by judgment-debtor—Application for rateable distribution of money deposited, if lies. The Court has no power to rateably distribute under s. 73 of the Civil Procedure Code money deposited in Court under O. XXI, r. 89, with a view to setting aside a sale of immoveable property in execution of a money decree. **HARAI SAHA v. FAIZLUR RAHAMAN (1913)**

19 C. W. N. 1125**s. 73, O. XXXVIII, rr. 5, 8, and 10 ;
O. XXI, rr. 52 and 63—**

Effect of attachment before judgment—Property deposited in Court—Decree—Priority—Suit for a declaration that attachment before judgment did not confer any title on the

**CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.****s. 73—concl'd.**

attaching creditor. A got certain property belonging to B attached before judgment. The property being of a perishable nature it was sold and the proceeds were deposited in Court. Subsequently one C obtained a decree against B and applied for the satisfaction of his decree out of the sum of money that was lying in Court. A filed an objection and it was allowed by the Court. After A had obtained his decree, the sum deposited in Court was distributed rateably between A and C. C brought the present suit for a declaration that he was entitled to get his decree satisfied out of the sum which had been deposited in Court: *Held*, that the effect of attachment before judgment was to prevent alienation. It did not confer any priority of title on the attaching creditor, and, therefore, the plaintiff was entitled to get his decree satisfied and the suit was maintainable. **Tikum Singh v. Sheo Ram Singh, I. L. R. 19 Calc. 286, referred to. BISHESHAIR DAS v. AMBIKA PRASAD (1915)**

I. L. R. 37 All. 575

s. 86—Sovereign Prince or Ruling Chief in British India, suit against—Sovereign or private capacity—Suit against him as trustee of certain temples—Rule of international law—Jurisdiction of municipal Courts—Waiver. Under s. 86 of the Civil Procedure Code (Act V of 1908), no Sovereign Prince or Ruling Chief can be sued in a Court of British India without the previous consent of the Governor-General in Council, whether the suit is brought against him in his sovereign capacity or in his private capacity such as a trustee of a temple in British India. *The Maharaja of Jaipur v. Lalji Sahai, I. L. R. 29 All. 379, Mighell v. Sultan of Johore, [1894] 1 Q. B. 149, Statham v. Statham and the Gaekwar of Baroda, [1912] L. R. Pr. 92, and Chandulal v. Awad bin Umar Sultan, I. L. R. 21 Bom. 351, referred to. Duke of Brunswick v. The King of Hanover, (1848) 2 H. L. C. 1, explained. NARAYANAN MOOTHAD v. THE COCHIN SIRCAR (1913)*

s. 92—

1. *Public trust—Suit instituted by two plaintiffs—Death of one plaintiff pending suit—Abatement of suit.* Where a suit concerning a public trust of a charitable or religious nature has been instituted by two persons having an interest in the trust with the consent of the Advocate-General and one of the plaintiffs dies, the suit will abate. But it is open to any other member of the public similarly interested to obtain the consent of the Advocate-General and to apply to be brought on to the record as a co-plaintiff, and it would be the duty of the Court to give a person wishing so to be made a party a reasonable opportunity of obtaining the consent of the Advocate-General. **CHHABILE RAM v. DURGA PRASAD (1915)**

I. L. R. 37 All. 296

2. *Suit regarding public charitable property—Consent by Collector—Conditional consent.* A suit was brought in the

CIVIL PROCEDURE CODE (ACT V OF 1908)—
confd.

s. 92—confd.

name of two plaintiffs for the removal of trustees

tion to file the suit under s. 92 of the Civil Procedure Code of 1908. The Collector replied as follows—'The Collector doubts whether s. 92 of the Civil Procedure Code applies to this case, but if the Court holds that it does, the Collector hereby declares his consent to the filing of a suit to claim any of the reliefs specified in s. 92 which the Court may deem fit to grant.' The *trying Court* was of opinion that the *shoro certificate* was defective in form and therefore dismissed the suit. The plaintiffs having appealed *Held*, dismissing the appeal, that the Collector had not acted in the manner provided by s. 92 of the Civil Procedure Code of 1908. He had not indicated on the proceedings that the suit was

unless it was such a suit as he would consider himself to be justified in filing at the relation of such two persons in his own name. The provisions of s. 92 of the Civil Procedure Code must be regarded as imperative. *SULEMAN HAJI USMAN v. SHAIKH ISMAIL* (1915) I. L. R. 39 Bom. 580

3. *Suit by mutawallis to remove trespasser managing trust as trustee de facto*—Leave, if necessary. S. 92 of the Civil Procedure Code does not apply where a plaintiff claiming to be the trustee of a public religious and charitable trust sues for the removal of a trespasser who has usurped the management of it. *Budree Das Mukim v. Choons Lal Johurry* 10 C. W. N. 551 s. c. I. L. R. 33 Calc. 787 followed. *Seth Rama Jogiah v. Venkata Charulu*, I. L. R. 26 Mad. 551, and *Sajedur Raja Chowdhury v. Gour Mohun Das Baishnar*, I. L. R. 24 Cal. 418, not followed. *AYATAYENSA BIDI v. HULFU KHALIFA* (1914) 19 C. W. N. 234

4. *Waqf*—Suit for removal of mutawallis—Defendant alleged to be a minor, but no allegation of mismanagement of waqf property. *Held*, that no suit would lie under s. 92 of the Code of Civil Procedure for the removal of mutawallis where no case of mismanagement of

medan law. *NIAMAT ALI v. ALI RAZA* (1914) I. L. R. 37 All. 56

CIVIL PROCEDURE CODE (ACT V OF 1908)—
confd.

s. 92, O. I. r. 3—

See PARTIES I. L. R. 42 Calc. 1135

s. 92 and 93, suit under—Alienation from trustee—Declaration against—Appeal by alienee—Death of trustee pending appeal—Abatement—Right to sue, meaning of—Alienation for consideration but not in good faith or without notice—Limitation Act (IX of 1908), s. 10, effect of. Where in a suit brought by the Collector of a district under s. 92 of the Code against the trustee and the alienee from him, a declaration was granted to the effect that the alienation in favour of the latter was not binding on the trust, and the alienee appealed, making the Collector and the trustee parties to the appeal, but pending appeal, the trustee died and his legal representative was not brought on the

Held, alienee (who was not a party to the suit) rose on the date of the alienation and as the suit was brought more than six years after that date, it was barred by limitation under art. 20 of the Limitation Act. Time will run in favour of an alienee for consideration though he may not be an alienee in good faith. Trust property in the hands of alienees for consideration and in good faith and without notice cannot be followed at all. *Per TYAGI, J.*—The phrase 'right to sue' with reference to appeals means 'right to obtain relief'. *PRASANNA VENKATACHALLA REDDIAN v. THE COLLECTOR OF TRICHINOPOLY* (1914)

I. L. R. 33 Mad. 1064

s. 97—

See APPEAL I. L. R. 42 Calc. 914

1. *Preliminary decree*—*Decisions that suit not barred as case*

with Dhonddev v. Ganesh Govind, I. L. R. 37 Bom. 60, overruled *Narayan Balkrishna v. Gopal Jiv Ghosh*, I. L. R. 38 Bom. 392, disented from *CHANDRAMAIA v. GANGADHARAPPA* (1914)

I. L. R. 39 Bom. 339

3. *Partnership accounts*, suit for—*Preliminary decree* declaring partnership dissolved and directing enquiries and accounts—*Part ordering enquiries* if to be separated from decree and treated as order—*Validity of order* if may be questioned on appeal from final decree. In a suit to have partnership accounts taken, the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.***s. 97—concl'd.**

Jrial Judge by a formal adjudication, dated 30th June 1908, (i) declared that the partnership was dissolved as from 1st July 1907, and ordered and decreed, (ii) that inquiry be made by the referee as to who were the partners, and (iii) that the Referee should take an account of the dealings of the parties with the assets of the partnership business. No appeal was preferred from this adjudication, and inquiry was made and accounts taken. The decision of the referee upon the inquiry which was adverse to the appellant was confirmed by the Judge. In an appeal against the final decree, the appellant took exception to the inquiry ordered by the Judge (as to who were the partners) as erroneous. *Held*, that the adjudication by the Trial Judge in which the inquiry was ordered was a preliminary decree, and not having been appealed against could not under s. 97 of the Civil Procedure Code be questioned on the final appeal. The adjudication did not cease to be a decree, because a subordinate part of it, if correctly made, might have been made separately as an order. The Code makes no provision for something which is neither a decree nor an order, nor anything which is both, neither does it provide that one adjudication by the Court can be resolved into diverse elements, some of which are decrees and some orders. **AHMED MUSAJI SALEJI v. HASHIM EBRAHIM SALEJI (1915)** 19 C. W. N. 449

s. 99—

See HINDU LAW—RELIGIOUS ENDOWMENT . . . I. L. R. 42 Calc. 536

s. 100, O. VI, r. 6—

See SPECIFIC RELIEF ACT (I OF 1877), s. 39 . . . I. L. R. 39 Bom. 49

s. 102—

See HOMESTEAD LAND.

I. L. R. 42 Calc. 638

s. 105—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 509

s. 105—Arbitration—Appeal. *Held*, that an order of a court setting aside the award of an arbitrator, and deciding that the case shall be tried by the Court is an order affecting the decision of the case within the meaning of s. 105 of the Code of Civil Procedure, and is therefore liable to be challenged in appeal against the decree. *Ganga Prasad v. Kura*, I. L. R. 28 All. 408, *Kalyan Das v. Pyare Lal*, 4 All. L. J. R. 256, dissented from. *Shyama Charan Pramanik v. Prohlad Darwan*, 8 C. W. N. 390, referred to. *Nanak Chand v. Ram Narain*, I. L. R. 2 All. 181, *Ram Jiwan v. Nawal Singh*, 5 All. L. J. R. 644, *Damodar Trimbak Dharap v. Raghu Nath Hari*, I. L. R. 26 Bom. 551, *Achuthayya v. Thimmayya*, I. L. R. 31 Mad. 345, *Mathooranath Tewaree v. Brindaban Tewaree*, 14 W. R. 327, followed. **RAM AUTAR TEWARI v. DEOKI TEWARI (1915)**

I. L. R. 37 All. 456

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.***s. 107, O. XLI, r. 4, application of—**

See COSTS . . . I. L. R. 42 Calc. 451

s. 109 —

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 509

s. 109 (c)—Appeal to His Majesty in Council—Practice—Grounds for granting certificate in case of connected appeals. It is a good ground for granting a certificate of fitness, for appeal to His Majesty in Council under s. 109 (c) of the Code of Civil Procedure that the case in which leave to appeal is sought is an appeal from the same decree and involving the same questions as another appeal in respect of which the same applicant has a right of appeal under ss. 109 and 110 of the Code. **MUHAMMAD WALI KHAN v. MUHAMMAD MOHI-UD-DIN KHAN (1914)** . . . I. L. R. 37 All. 124.

s. 110—

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

ss. 114, 151—

See PROBATE AND ADMINISTRATION ACT (V OF 1881), s. 50.
I. L. R. 37 All. 380

s. 115—

See AWARD . . . I. L. R. 38 Mad. 256.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, r. 89.

I. L. R. 38 Mad. 775.

Civil Rules of Practice, Rule 277—Criminal Procedure Code (Act V of 1898), s. 145—Pleader engaged in proceedings under—Whether disqualified to act for the other side in subsequent civil suit. A pleader who had appeared for a party in proceedings under s. 145 of the Code of Criminal Procedure, must, before appearing for the opposite party in a subsequent civil suit flowing out of such proceedings, satisfy the court that in acting in those proceedings he did not as a fact obtain from his then client any knowledge which would be of use to his present clients, or that if he did obtain any such knowledge, then such knowledge is now, so to speak, public property available to any pleader who can obtain inspection of the record of the proceedings in the Magistrate's Court. If he fails to do so, he brings himself within rule 277 of the Rules of Practice framed by the High Court and it cannot be said that the Court has wrongly exercised its discretion in refusing him audience. *Little v. Kingswood Collieries Company*, 20 Ch. D. 733, referred to. **SRI NIVASA RAU v. PICHAI PILLAI (1913)**

I. L. R. 38 Mad. 650

s. 141, O. II, r. 2—

See EXECUTION . I. L. R. 38 Mad. 199

s. 141, O. XXI, r. 90, O. IX, r. 9—
Application for setting aside sale—Dismissal for

CIVIL PROCEDURE CODE (ACT V OF 1908)— contd

s. 141—contd.

default—Restoration An application for setting aside an execution sale is not an application for execution, but in the nature of an original proceeding which is not excluded from the purview of s. 141 of the Civil Procedure Code. Such application if dismissed for default can be restored under O IX, r. 9, of the Civil Procedure Code. *Aiem Mandal v. Raj Mohan Das*, 13 C. L. J. 532, and *Hari Charan Ghose v. Amonmatha Nath Sen*, 1 L. R. 41 Cal. 1, distinguished. *Subbiah Naicker v. Ramanathan Chelvar*, 1 L. R. 37 Mad. 462, 475, and *Safdar Ali v. Kishan Lal*, 12 C. L. J. 6, followed. *NICHIA BIBEE v. HEMANTA KUMAR RAY* (1915) 19 C. W. N. 758

s. 144—Decree holder as auction purchaser in possession of property sold for more than three years—Subsequent setting aside of sale—Meane profits, application for, by purchaser from judgment debtor—S. 144, Civil Procedure Code, applicability of inherent power

been in possession of the property for more than three years. The respondent purchased the

for and obtained such meane profits. *Held*, that the Court below had no jurisdiction under s. 144 Civil Procedure Code, to entertain the application, but inasmuch as the respondent obtained an order in his favour in the Court below purporting to be made under s. 144, Civil Procedure Code, and inasmuch as a determination of a question arising under s. 144 is a decree by force of the definition clause in s. 2, the respondent could not be heard to say that the appeal was incompetent. That even assuming that the Court had inherent jurisdiction to award meane profits upon the application presented by the respondent it either had no power or it was an improper and unsound exercise of judicial discretion to award meane profits for any period beyond three years before the application for which only meane profits could have been obtained by suit under Art. 109 of the Limitation Act. *DINO NATH DAS v. JOGENDRA NATH BHULLAR* (1914) 19 C. W. N. 1167

s. 145—

1. Surety for costs of Privy Council Appeal—Decree for costs in Privy Council if may be executed against properties charged by surety—Personal execution Under s. 145 of the Civil Procedure Code a party who has obtained a decree for costs in Privy Council can proceed by application to realise the amount of costs decreed against the surety (for the judgment debtor) personally, but not against the property which he had charged under s. 602 of the old Civil Pro

CIVIL PROCEDURE CODE (ACT V OF 1908)— contd

s. 145—contd

cedure Code. Even under O XXXIV, r. 14, of the Civil Procedure Code, which has replaced s. 69 of the Transfer of Property Act, the properties charged cannot be sold except by instituting a mortgage suit. *CHANDANATHI v. MADHO PRASAD* (1914) 19 C. W. N. 178

2. Surety, execution of decree against—Person depositing chattels to secure fulfilment of decree, if such surety—Personal liability, if essential S. 145 of the Civil Procedure Code applies only where the surety has rendered himself personally liable for the decretal amount. Where A having been brought under arrest in execution of a decree, B handed over two Government promissory notes to the decree holder a pleader upon the understanding that the latter should hold them as security for the due fulfilment of the decree against A. *Held*, that the case did not come under s. 145, Civil Procedure Code. B only created an equitable charge upon the notes in favour of the decree-holder by depositing them as security, and this liability could only be enforced in a regular suit. *BRADENDRA LAL DAS v. LAKSHMI NARAYAN KHANNA* (1915) 19 C. W. N. 861

s. 151, O. XII, r. 1, 11—

See APPZAL 1 L. R. 43 Cal. 433

13. 151, 47, O. XLVII, r. 2—Court's inherent power, if to be exercised in contravention of prohibition of statute and if to be exercised when not tending towards substantial justice—Statute, application of In exercise of its inherent powers under s. 151 of the Civil Procedure Code, the Court cannot assume jurisdiction to grant a review where it has been expressly forbidden by the Legislature to entertain such application. On any point specifically dealt with by the Code, the Court cannot disregard the letter of the enactment according to its true construction, though, as the Legislature cannot anticipate and make express provisions to cover all possible contingencies, it is the duty of a Judge to apply the provisions of the law not only to what appears to be regulated expressly thereby, but also to all cases to which just application of them may be made and which appears to be comprehended either within the express terms of the law or within the consequences that may be gathered from it. The inherent power of a Court can be invoked only for the attainment of the ends of substantial justice for the administration of which alone Courts exist. A sale certificate is merely evidence of title and does not create title, so that if the Court should refuse to grant such a certificate to the auction purchaser, possession should not be delivered to him as required by the Code. This will not preclude him from suing for a declaration of title and for recovery of possession within 12 years of the date when the sale was confirmed. Where a party sues to act under s. 151, Civil Procedure Code, a

CIVIL PROCEDURE CODE (ACT V OF 1908)—
*contd.***s. 151—concl'd.**

Munsif cancelled an order for delivery of possession passed by his predecessor on the ground that the application for delivery of possession having been made more than 3 years after the date of confirmation of the sale was manifestly barred by limitation. *Held*, that as the Munsif was expressly forbidden by statute to entertain an application for review, he could not entertain the application in exercise of his inherent powers. That the order should not have been made, as its only effect would be to drive the auction-purchaser to institute a suit. **SASI BHUSAN MOOKERJEE v. RADHA NATH BOSE (1914)** . . . **19 C. W. N. 835**

ss. 151, 152—Inherent jurisdiction of Court—Scope of s. 151—Amendment of decree. S. 152 does not in any way affect the inherent jurisdiction of the Court under s. 151 and in exercise of this jurisdiction the Court can amend a decree even when s. 152 has no application. **MOHABIR PROSHAD CHOUDHURY v. CHANDRA SEKHAR SAHI (1914)** . . . **19 C. W. N. 1021**

s. 152—Refusal of Court to correct an accidental mistake in the drawing up of a decree—Revision—Jurisdiction. In a suit for sale on foot of a mortgage one of the defendants pleaded a prior mortgage. An issue was expressly struck on the point and was found in favour of the prior mortgagee. The operative portion of the judgment directed that a decree for sale should be prepared in accordance with the provisions of O. XXXIV, r. 4, of the Code of Civil Procedure; but the decree which was drawn up was one for sale of the property in suit, without any reference to the prior mortgage. The prior mortgagee presented an application under s. 152 of the Code of Civil Procedure to the Court which passed the decree to have it amended. *Held*, that the prior mortgagee, whether or not he had preferred an appeal from the decree, was entitled, with reference to s. 152, to have it amended, and the Court in refusing to amend had failed to exercise a jurisdiction vested in it by law. **SAHADEO GIR v. DEO DUTT MISIR (1915)**

I. L. R. 37 All. 323

s. 153—

See DEOREE-HOLDER.

I. L. R. 38 Mad. 677

O. I, r. 1—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

O. I, r. 10—Parties—Competence of Court to add parties in second appeal. *Held*, that the High Court cannot in second appeal add a person as a party unless such person was a party to the appeal before the lower Appellate Court, notwithstanding that he was a party to the suit in the Court of first instance. **Chunni Lal v. Lala Ram, I. L. R. 16 All. 5**, followed. **PACHKAURI RAUT v. RAM KHLAWAN (1914)**

I. L. R. 37 All. 57

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. II, rr. 1, 2, and 3—Previous suit for declaration, dismissal of, for want of prayer for possession—Later suit for declaration and possession, maintainability of. The dismissal of a previous suit for a declaration of title to certain properties on the ground that the plaintiff was found entitled to possession is no bar to a suit for possession based on the same title as the causes of action, for which the allegations in the plaints must be looked to, are different in the two cases. O. II, rr. 1, 2 and 3 are no bar to the later suit. **Chand Kour v. Partab Singh, I. L. R. 16 Calc. 98**, **Thrikaitkat Madathil Raman v. Thiruthiyil Krishnan Nair, I. L. R. 29 Mad. 153**, **Ramaswami Ayyar v. Vythinatha Ayyar, I. L. R. 26 Mad. 760**, **Nonoo Singh Monda v. Anand Singh Monda, I. L. R. 12 Calc. 291**, **Jibunti Nath Khan v. Shib Nath Chuckerbutty, I. L. R. 8 Calc. 819**, and **Mohan Lal v. Bilaso, I. L. R. 14 All. 512**, followed. **Muthu Narayana Reddi v. Rayalu Reddi, 6 Mad. L. J. 51**, and **Rangasami Pillai v. Krishna Pillai, I. L. R. 22 Mad. 259**, not followed. **SILIMAN SAIB v. HASSON (1913)** . **I. L. R. 38 Mad. 247**

O. II, r. 2—

1. Omission to sue for right relief—Maintainability of subsequent suit. Where a plaintiff knew what relief he was entitled to and deliberately omitted to claim the right relief, his subsequent suit in respect to the same cause of action for the right relief was held to be barred by the provisions of O. II, r. 2, of the Code of Civil Procedure. **ABDUL HAKIM v. KARAN SINGH (1915)** . . . **I. L. R. 37 All. 646**

2. Previous suit for specific performance of an agreement to sell—Decree for specific performance—Deed of conveyance obtained in execution—Subsequent suit for recovery of possession against the vendors—Suit not barred. Where the plaintiff, who had obtained in a previous suit a decree against the defendants for specific performance of an agreement to sell certain immovable property to the plaintiff and had got a sale deed in his favour in execution of the decree, instituted the present suit for the recovery of possession of the lands from the defendants. *Held*, that the suit was not barred by O. II, r. 2 of the Civil Procedure Code (Act V of 1908). At the time the plaintiff brought the previous suit, the right to possession of the lands was not vested in him, as he acquired that right only on the execution of the deed of conveyance. **Narayana Kavirayan v. Kandasami Goundan, I. L. R. 22 Mad. 24**, disapproved. **Rangayya Goundan v. Nanjappa Rao, I. L. R. 24 Mad. 491**, explained. **Nathu valad Pandu v. Budhu valad Bhika, I. L. R. 18 Bom. 537**, followed. **KRISHNAMMAL v. SOUNDARARAJA AIYAR (1913)** . **I. L. R. 38 Mad. 698**

3. Specific Relief Act (I of 1877), s. 42—Suit for declaration—Previous decree between third parties—Plaintiffs not parties—Suit to declare that the decree is collusive and not binding on plaintiffs, if maintainable. The plaintiffs

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concl.

O. V—concl.

so that the cover may in due course reach the lady herself. In the present case the plaintiff-respondent having failed to rebut the allegation on oath made by the appellants, the High Court held on a consideration of the circumstances of this case that it was established that the appellants had no knowledge of the suit and they were prevented by sufficient cause from appearing when it was called on for hearing and the *ex parte* decree was set aside as against them. **KSHIRODE SUNDARI DAS** v. **NABIN CHANDRA SAHA** (1915)

19 C. W. N. 1231

O. VIII, r. 6—Suit by an Inamdar against a Khatedar for recovery of sums—Set-off claimed in a capacity different from that in suit not allowable. In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immoveable property payable by the Khatedar, the defendant, as a *pujari* (worshipper), claimed to set off the stipend payable to him by the plaintiff. *Held*, that the defendant could not claim the set-off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff. **MADHAVRAO MORESHVAR** v. **RAMA KALU** (1914)

I. L. R. 39 Bom. 131

O. IX, r. 5 ; O. XXIII, r. 1—

See **CONTRACT ACT (IX OF 1872)**, ss. 134, 137 . **I. L. R. 39 Bom. 52**

O. IX, rr. 8 and 9—When the plaintiff and his pleader are both absent on the day fixed for the hearing of a case and the Court does not intend to give them another opportunity of appearing it ought not to decide the suit on the merits but should dismiss it for default of appearance. **PIUL KUAR** v. **HASHMATULLAH KHAN** (1915)

I. L. R. 37 All. 460

O. IX, r. 13—

1. **Decree *ex parte*—Application to set aside decree—Appeal—Decree confirmed in appeal before hearing of application to set it aside.** When the High Court has once confirmed a decree on appeal, it is not open to the Court which passed the decree to entertain an application to set the decree aside, and it makes no difference that the application to set the decree aside was filed before the appeal was disposed of. **MATHURA PRASAD** v. **RAM CHARAN LAL** (1915)

I. L. R. 37 All. 208

2. **Compromise petition purporting to be by all the defendants filed by those actually present in Court—Decree passed on such compromise petition—Subsequent repudiation by defendants not present at filing of petition—Jurisdiction of Court to set aside decree as *ex parte* decree under O. IX, r. 13.** The petitioners instituted a suit for declaration of their title to, and for possession of, certain lands. Two of the defendants (Nos. 4 and 5) filed a petition of compromise

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and asked for a decree, so far as they were concerned, on that compromise and an *ex parte* decree against the other defendants. The Court, however, ordered fresh service on the other defendants, and subsequent thereto defendants Nos. 4 and 5 appeared in Court with a petition of compromise purporting to be executed by defendants Nos. 1 to 3 as well as by themselves. On this petition a decree was made in terms of the compromise. Afterwards defendants Nos. 1 to 3 put in a petition to the Court stating that defendants Nos. 4 and 5 had no authority to present the petition of compromise on their behalf, that no summons had been served on them, and that the petition was fraudulently represented as being made by them. The Court acting under O. IX, r. 13, Civil Procedure Code, set aside the decree and ordered a re-trial of the case. *Held*, that the Judge when he made his order was under the impression that all the parties in the case were before him and that the petition was the petition of all the parties; consequently in granting the petition he did not intend to make it *ex parte* and the decree could not be treated as an *ex parte* one, and consequently O. IX, r. 13, Civil Procedure Code, did not apply. **DAMODAR MISRA** v. **HRISHI NAIK** (1914)

19 C. W. N. 118

O. IX, r. 13 ; O. XXXII, r. 3—

Guardian *ad litem*—Illusory appointment of guardian—Competence of minors to have a decree passed without their being represented, set aside. A suit was brought against certain minor defendants naming as guardian *ad litem* their uncle, who was also a defendant. The uncle refused to act as guardian *ad litem* and stated that the minors lived with their mother. No notice was served upon the mother, but upon the application of the plaintiffs the Court Amin was appointed guardian *ad litem* of the minors. The plaintiffs did not deposit any amount for the expenses of the guardian, who did not take any steps to defend the suit or to inquire whether there was a defence. A decree was passed *ex parte* against the minors, and an application on their behalf, through their mother, to have the case restored was rejected. The Courts below found that the decree was not void and dismissed the suit. *Held*, that in the circumstances above set forth the minors were entitled to a declaration that the decree was null and void as against them. **WALIAN** v. **BANKE BEHARI PERSHAD SINGH**, **I. L. R. 30 Calc. 1021**, and **MUNNU LAL** v. **GHULAM ABBAS**, **I. L. R. 32 All. 287**, distinguished. *Held*, also, that the minors were not debarred from bringing this suit by reason of their not having applied to have the *ex parte* decree set aside under O. IX, r. 13, of the Code of Civil Procedure. **BHAGWAN DAYAL** v. **PARAM SUKH** (1915) . **I. L. R. 37 All. 179**

O. XIV, r. 2—Scope and application of rule—Issues of law, determination of, in the beginning—R. 4, O. VII—Suit by plaintiff in

CIVIL PROCEDURE CODE (ACT V OF 1908)—
*contd.*O. XIV—*contd.*

representative capacity, character of plaintiff if should be stated in cause title—Amendment of plaint by leave of Court, effect of. On the 30th July 1886, the plaintiff was declared to be a disqualified proprietor and the Court of Wards took charge of her estate. On the 7th June 1890, by a *lobala* the Court of Wards sold to the father of the defendant all the properties in suit except two mauzas. By a further *lobala*, dated 15th February 1901, the two mauzas were similarly conveyed. On the 1st August 1911, the Court of Wards released the property of the plaintiff from its charge. The plaintiff on 31st May 1912 sued for a declaration that the two *lobalas* were invalid and for restoration of possession of the properties concerned. As regards the two mauzas sold in 1901, the plaintiff originally did not show in the cause title the character in which the plaintiff sued, although the body of the plaint and the prayers made it clear that she sued as the *shebait* of certain idols. Subsequently with the leave of the Court the cause title was amended so as to show that the plaintiff sued on behalf of herself and as *shebait* and the necessary amendments in the body of the plaint were made. On the application of the defendant the Trial Judge tried the issues of law first and dismissed the suit. *Held*, that the application of r. 2, O. XIV, Civil Procedure Code, is not confined only to cases in which the issues of fact had not been settled. The rule also applies to cases where the Court has not postponed the settlement of the issues of fact, and the course adopted by the Trial Judge in disposing of the issues of law was not illegal. That O. VII. r. 4, does not require that when the plaintiff sues

not in any view amount to an addition or substitution of a new plaintiff within the meaning of s. 22 of the Limitation Act. That Art. 91 of the Limitation Act had no application to the suit in so far as it was instituted by the plaintiff as *shebait* of the idols. *KARNANI SINGH v. WASIR ALI MEERZA* (1913) . . . 19 C. W. N. 1193

O. XX, r. 7—

See LIMITATION. I. L. R. 37 All. 527

O. XXI, r. 2, sub-rr. 1, 2 and 3—Adjustment of decree not certified if can be recognised by Court executing decree—*Estoppel*, if applies between decree holder and judgment debtor—*Estoppel*, if can be invoked to nullify an express statutory provision—Limitation Act (IX of 1908), s. 1, Art. 174—Application for notice on decree holder to

27th June 1912 to the effect that the decree could not be executed inasmuch as it had been adjusted

CIVIL PROCEDURE CODE (ACT V OF 1908)—
*contd.*O. XXI—*contd.*

on the 11th February 1912 and, under the adjustment, the decree holder had agreed to accept the judgment debt in certain specified instalments. This adjustment was not recorded as prescribed in sub-rr. 1 and 2 of O. XXI, r. 2. *Held*, that as the adjustment had not been recorded, the Court executing the decree could not recognise it under O. XXI, r. 2, sub-r. 3. That even if the application of the 27th June were treated as an application for the issue of notice to the decree holder to show cause why the adjustment should not be recorded, it was barred by limitation under Art. 174 of the Second Schedule of the Limitation Act. *Held* (as to the contention that the decree holder having subsequently to the alleged adjustment received payments in accordance therewith was estopped and the Court was bound to determine whether there had or had not been an adjustment), that this argument was clearly opposed to the provisions of sub-r. 3, and the doctrine of *estoppel* cannot be invoked to nullify an express statutory provision. *JOGENDRA NATH SARKAR v. PRONATH NATH CHATTERJEE* (1913) . . . 19 C. W. N. 850

O. XXI, r. 12—

See EXECUTION OF DECREE.

I. L. R. 37 All. 527

O. XXI, rr. 35, 97—

See BAILIFF. I. L. R. 42 Calc. 313

O. XXI, r. 52—

See DECREE. I. L. R. 39 Bom. 80

See RATEABLE DISTRIBUTION.

I. L. R. 38 Mad. 221

O. XXI, r. 63—Order in favour of the claimant—Alienation by the claimant subsequently—Suit by decree holder subsequent to the alienation to set aside the order—*Lis pendens*, doctrine of, if applicable—Pendency of proceedings—Suit, a form of appeal—Alienor, joined as party after one year from the date of order, not a necessary party—No bar of limitation—Limitation Act (IX of 1908), s. 22, cl. 1 and 2. A purchaser of property from a claimant, after an order has been passed in his (claimant's) favour but before a suit under O. XXI, r. 63 was instituted, is an alienor *pendente lite* and is therefore not a necessary party to the suit; and if the necessary parties had been brought within one year, the alienor cannot advance the plea of limitation as s. 22, cl. (2) of the

passed on the claim petition are affected by the doctrine of *lis pendens* formulated in s. 22 of the Transfer of Property Act. Suits of this class

CIVIL PROCEDURE CODE (ACT V OF 1908)— contd.

O. XXI—contd.

though called original suits, are not in their essence original actions but merely forms of appeal allowed by the Civil Procedure Code to be brought in the guise of original suits. *Phul Kumari v. Ghunshyam Misra*, I. L. R. 35 Calc. 202, followed. *Veera Pannadi v. Karuppa Pannadi*, Mad. L. T. 154, *Harishunkar Jebhai v. Naran Karsan*, I. L. R. 18 Bom. 260, *Keshori Mohun Rai v. Hursook Dass*, I. L. R. 12 Calc. 696, and *Settappa Goundan v. Muthia Goundan*, I. L. R. 31 Mad. 268, referred to. *KRISHNA PPA CHETTY v. ABDUL KHADER SAHIB* (1913) . I. L. R. 38 Mad. 535

O. XXI, r. 66—Setting aside a sale—Material irregularity in publication of sale proclamation—Understatement of revenue due on the land—Undervaluation of property—Statement of the same by the decree-holder—No objection by the judgment-debtor to the amount of Government revenue or valuation—Mistake of the judgment-debtor as to interest in the property sought to be brought to sale—Duty of Courts in India in conducting sales in execution—Mistake of judgment-debtor due to action of decree-holder—Rule of estoppel of judgment-debtor, no application—Right of auction-purchaser before and after confirmation of sale—No absolute right for confirmation of sale. Though it was not incumbent upon the Court to state the value of the property in a proclamation for sale, a materially incorrect statement of the revenue or of the value of the property where the value is stated would constitute an irregularity which if it caused substantial injury to the judgment-debtors, would entitle him to have the sale set aside. Where the judgment-debtor's act in not objecting to the statement of the peshkash and in stating the value on the footing of the peshkash being correctly stated by the decree-holder was due to a mistake of fact regarding what the Court intended to sell, the judgment-debtor should not be held to be estopped from objecting to the sale on the ground of material irregularity. A party who does not raise an objection to the proclamation which he ought to have raised is estopped from complaining of an irregularity resulting from an erroneous statement which he should have corrected. *Gridhari Singh v. Hurdeo Narain Singh*, L. R. 3 I.A. 230, and *Olpherts v. Mahabir Pershad Singh*, L. R. 10 I.A. 25, referred to. *Arunachellam v. Arunachellam*, I. L. R. 12 Mad. 19, and *Behari Singh v. Mukhat Singh*, I. L. R. 28 All. 273, referred to. In India an execution sale is an act of the Court. Where an act of a Court is induced by the mistake of parties, it may be set aside. But the Court will not apply the rule of estoppel to cases where the judgment-debtor was not aware of the facts to which he was bound to object. *KALAHASTI, RAJA OF v. MAHARAJA OF VENKATAGIRI* (1913)

I. L. R. 38 Mad. 387

O. XXI, r. 89—

1. ————— *Execution of decree—Application to set aside the sale within limitation*

CIVIL PROCEDURE CODE (ACT V OF 1908)— contd.

O. XXI—contd.

—*Money tendered but not received through Treasury Officer's action.* The judgment-debtor made an application under O. XXI, r. 89, of the Code of Civil Procedure to set aside a sale held in execution of a decree on the last day of limitation. The money required to be paid was tendered to the Treasury Officer shortly before 3 P.M., but he refused to take it because there was not sufficient time to count it and also because he thought that it could be paid at any time within three days of the tender. The judgment-debtor paid it the next day, which was beyond thirty days after the sale. *Held*, that the judgment-debtor having done all that lay in his power to deposit the money in time and having been prevented by the action of the Treasury Officer, should be taken to have made the payment within the time allowed by law *Mahomed Akbar Zaman Khan v. Sukhdeo Pande*, 13 C. L. J. 467, referred to. *MUNNA LAL v. RADHA KISHAN* (1915)

I. L. R. 37 All. 591

2. ————— *Sale of immoveable property in Court-auction—Subsequent private sale by judgment-debtor—Application by judgment-debtor to set aside auction-sale—No locus standi to apply—Order rejecting application—Revision petition to High Court under Civil Procedure Code (Act V of 1908), s. 115—Not maintainable though order erroneous.* Where after a sale in Court-auction of certain immoveable property, the judgment-debtor sold away all his rights in the same property to a stranger by a private sale, and subsequently applied under O. XXI, r. 89, of the Code of Civil Procedure (Act V of 1908) to set aside the auction-sale: *Held*, that the judgment-debtor had no locus standi to apply under O. XXI, r. 89, to have the sale set aside. *Anantha Lakshmi Ammall v. Kunmanchankarath Sankaran Nair*, (1913) Mad. W. N. 101, referred to. *Ishar Das v. Asaf Ali Khan*, I. L. R. 34 All. 186, followed. *Per SADASIVA AYYAR, J.*—A Civil Revision Petition under s. 115 of the Code of Civil Procedure does not lie against an order of the Lower Court rejecting an application under O. XXI, r. 89, though the order was erroneous in law, as the lower Court did not act illegally or beyond its jurisdiction or with material irregularity in arriving at the decision. *Per SPENCER, J.*—Neither an amendment of the petition nor the presentation of a fresh petition by the private purchaser could be allowed by the High Court to be made, as he was not a party to the proceedings in the lower Court and more than one year had expired after the time allowed by Art. 166 of the Limitation Act (IX of 1908) for filing a petition in the lower Court. *SUBBARAYUDU v. LAKSHMINARASAMMA* (1913) . I. L. R. 38 Mad. 775

O. XXI, r. 90—

1. ————— *Application to set aside sale dismissed for default—Dismissal of application for restoration—Appeal, if lies. An*

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. XXI—contd.

application to set aside a sale under r 90 of O XXI

Code did not apply to this order s 141 of the Code which replaces s. 617 of Act XIV of 1882

business leaving no instructions to his pleader. Returning later, he found that his case had been called on in the meanwhile and dismissed for non-prosecution. Held, that there were no grounds for restoring the case. *Manilal Dhunji v Gulam Hosain*, 1 L R 13 Bom. 12, and *Ismail Ibrahim v Jan Mahomed*, 10 Bom. L R 904, relied on. *Somayya v Subbama*, 1 L R 26 Mad 599, and *Lalla Prasad v Ram Karan*, 1 L R 34 All 426, not followed. *CHARU CHANDRA GHOSH v CHANDI CHARAN RAY CHOUDHURY* (1914)

19 C. W. N. 25

2. Step in execution of decree for arrears of rent—Non transferable occupancy holding, transfer of a portion of, is entitled to apply for reversal of sale. A transferee of a portion of a non transferable occupancy holding is entitled to apply for reversal of a sale in execution of a decree for arrears of rent obtained by the entire body of landlords. The rule formulated in r 90 of O XXI of the Civil Procedure Code of 1908 has a wider scope and is of a more comprehensive character than the rule laid down in s. 311 of the Code of 1882. *ABDUL AZIZ v TARAFUD-DIN SHERAH* (1914)

19 C. W. N. 326

O. XXI, rr. 90, 91 and 93—

See LIMITATION ACT (IX OF 1908), s. 22

1 L R. 38 Mad. 837

O. XXI, r. 91—Auction purchaser induced to buy property of small value by misrepresentation—Remedy. Where it appeared that it was known to the decree holder that 1 anna out of a 1 anna 16 krants share put up by him for sale in execution of his decree had been previously sold in execution of a mortgage decree. Held, that it was not open to the purchaser at the sale who got 16 krants at least of the property purported to be sold to apply under O. XXI, r. 91, of the Civil Procedure Code, on the ground that the judgment-debtor had no saleable interest in the property, though if he was induced to make the purchase by fraud, he might not be without other remedy. *Nahirmul Marwari v Sudul Ali*, S. O. L. R. 468, *Pratap Chandra Chakrabarty v Prindul*, 1 L R 9 Calc. 506, *Ram Kumar Dey v Shauke Ibrahim Ghose*, 1 L R 9 Calc. 626, *Somram Das v. Mukhtar Das*, 1 L R. 23 Calc. 235, *Durga Sundara*

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. XXI—contd.

v Govinda Chandra, 1 L R 10 Calc. 368, *Sant Lal v Ramji Das*, 1 L R 9 All 167, and *Birji Mohan Thakur v Rai Unanath Chaudhary*, 1 L R 20 Calc 8 L R 19 I A 151, referred to. *SUKGOBINDA SINGH v DHANU-DHARI SINGH* (1915)

19 C. W. N. 1291

O. XXII, r. 10—

1. Lease, forfeiture of—Insolvency of a defendant—Vesting of his estate and effects in the Official Assignee—Refusal of Official Assignee to defend the suit—Inability of defendant to defend independently of the Official Assignee—Practice. In a suit by the lessor against the lessee for forfeiture of a lease by reason of breaches of covenant, no cause of action survives against a defendant who has become insolvent and whose estate has vested in the Official Assignee. If in such a case the Official Assignee refuses to defend a suit affecting the estate of the insolvent, the latter cannot defend independently of the Official Assignee. *TRIBHOVANDAS NANOTAMDAS v ABDULLALLY HANUMJI* (1914)

1 L R. 39 Bom. 563

2. Preliminary decree—Sale of mortgaged property—Right of purchaser to be made a party to the suit. A preliminary decree for redemption of a usufructuary mortgage was passed in 1908, but there was an appeal, and the decree of the High Court, which confirmed the decree of the Court below, was passed in 1910, and the time for payment of the mortgage money was extended. After the time fixed for payment had expired, but before the final decree was passed,

ing at the time of the sale and the purchasers entitled to have their names entered in the record as plaintiffs. *Rihugoon Das Akettry v Nillants Ganguli*, 9 C. II A 171, referred to. *MUHAMMAD MASUD ULLAH v JARAO BAI* (1915)

1 L R. 37 All. 226

O. XXIII, r. 1—Appellate Court.

Instance, permission to withdraw his suit and give him leave to institute a fresh one. *Ganga Ram v Datta Ram*, 1 L R 3 All. 32, followed. *Choragudi Chinnu Reddy v Raja Varad Pajji Appa Rao*, 27 Mad. L R 211, and *Elanath v Ramoji*, 1 L R. 35 Bom. 261, dissented from. *ARZAL BHOAM v ANBARI KHANUM* (1915)

1 L R. 37 All. 326

O. XXIII, r. 3—

1. Compromise—Terms outside the scope of the suit, recorded in the decree—Decree so far as it relates to the suit, effect of—Terms forming consideration for the plaintiff to the subject matter of the suit—Decree, and its effect

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. XXIII—contd.

—Objection in execution, maintainability of—Contract Act (IX of 1872), ss. 38 and 51—Reciprocal promise—Non-performance by one party wrongfully—Consequent non-performance by the other, right, effect of—Contract at end—Compensation—Offer of performance, essentials of—Conditional offer—Offer to release without executing release deed, insufficient. The plaintiff sued to recover a sum of money on a simple money-bond executed by the first defendant and the father of the second and third defendants. The parties entered into a compromise by which the disputes between them, including the claim in the suit, were adjusted and a decree was passed in the suit in accordance with the compromise 'so far as it related to the suit.' Under the compromise the defendants agreed to get a release of certain properties which had fallen to the share of the plaintiff in a partition between the plaintiff and the first defendant and some other properties purchased by the former from the latter, from the claims of a mortgagee (decree-holder) of the same, on the plaintiff depositing in Court within a certain time a sum of money for payment to the mortgagee towards his decree. The plaintiff failed to deposit the amount. The defendants gave notice to the plaintiff, by a posted letter offering to get a release of the properties if the plaintiff paid the amount in one week, but the plaintiff did not pay the amount. The third defendant took an assignment of the mortgage-decree, brought the properties to sale in execution and purchased them in auction. The defendants applied in execution of the compromise-decree to recover a sum of money as due to them under the compromise, alleging that they had performed or offered to perform the conditions laid on them under the compromise. The plaintiff contended that the defendants could not recover the amount as the claim for it could not be deemed to have been included in the decree, and if it were included the decree was *ultra vires*; and further that the defendants, having failed to fulfil their part of the agreement, were not entitled to enforce the other terms of the compromise. *Held*, that all the terms recorded in the compromise-decree which formed part of the consideration for the adjustment of the subject-matter in the suit, must be deemed to be part of the decree and can be enforced in execution proceedings. A compromise-decree, even if it includes matters beyond the scope of the suit, is not *ultra vires*, and no objection can be taken to the enforcement of the same in execution proceedings. When the parties to a contract fail to perform their reciprocal promises, the one wilfully and the other because he is not bound to fulfil his part unless the former has fulfilled his preliminary part, the contract itself comes to an end by the acts of both the parties except for the purpose of enabling the innocent party to claim compensation from the other. An offer of performance must be unconditional, if it has the same effect as performance. A mere offer, by a posted letter, that the party liable was

CIVIL PROCEDURE CODE (ACT V OF 1908)
contd.

O. XXIII—concl.

ready to execute a release without having a document of release ready, is not a valid offer under s. 38 of the Contract Act. *Held* (on the facts of the case), that though the plaintiff failed to pay the money into Court, as the defendants failed to fulfil their part of the agreement to make a valid unconditional offer to perform the same, and as the defendants disabled themselves from performing their part by reason of the purchase of the properties by the third defendant, the defendants were not entitled to enforce the other terms included in the compromise-decree. *SABAPATHY v. VANMAHALINGA* (1914)

I. L. R. 38 Mad. 959

2. ————— *Lawful compromise—Hindu Law—Office of archaka, alienation of—Custom, validity of—Disqualification of females to perform duties of—Right of females to inherit—Performance of duties by proxy—Public policy—Undue influence—Low price, effect of—Contract Act (IX of 1872), s. 16, cl. (2).* Where the parties to a suit instituted in respect of a half share in the *archaka* miras in a Saivite temple, entered into a compromise during the pendency of a Second Appeal in the case, by which one of the parties alienated for a pecuniary benefit a portion of his right to the office in favour of the other party (who was a female), and the latter applied by a petition to the High Court to pass a decree in accordance with the compromise: *Held*, that the compromise was not lawful and that no decree could be passed in accordance therewith under O. XXIII, r. 3, of the Civil Procedure Code. *Per SADASHIVA AYYAR, J.*—An alienation of a religious office by which the alienor gets a pecuniary benefit cannot be upheld, even if a custom is set up sanctioning such an alienation. It is the settled custom that females by reason of their sex are permanently disqualified from performing the duties of an *archaka* in a Saivite temple. A person, who is permanently disqualified to do the duties of an office, cannot inherit the office while at the same time delegating the duties to others, whether the permanent disqualification is the result of conversion to any other religion or insanity or sex. A trusteeship for secular purposes can be held by a female. The fact that a person is obliged to part with his property for what he considers an unduly low price owing to his pressing necessities, is not a ground for holding that the contract is vitiated by undue influence. *SUNDARAMBAL AMMAL v. YOGAVANAGURUKKAL* (1914)

I. L. R. 38 Mad. 850

O. XXXIV—

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Cal. 455

————— *Mortgage suit, application for decree absolute in—Limitation—Scope and effect of Order.* The decree nisi in a mortgage suit was made when the Civil Procedure Code of 1882 was in force. The application for making

CIVIL PROCEDURE CODE (ACT V OF 1908)—
*contd*O. XXXIV—*contd.*

the decree absolute was made more than 12 years after the date of the decree and after the Civil Procedure Code of 1908 came into operation. *Held*, that prior to the Code of 1908, there was no period of limitation within which a plaintiff was bound to apply for the order absolute for sale in a suit brought for sale of the mortgaged property, and the provisions of O XXXIV of the First Schedule to the Code of Civil Procedure, 1908, which repealed ss 85 to 90 of the Transfer of Property Act do not apply so as to take away a vested right which the plaintiff had of applying to have the decree for sale made absolute and the application filed by him was not barred by limitation *Gopeshwar Pat v Jiban Chandra*, 18 C W N 304 followed *KISTA BAR v BANAMONI DEBIA* (1914) 19 C. W. N. 470

O. XXXIV, r. 1—

See HINDU LAW—MORTGAGE
I. L. R. 42 Calc 1063

O. XXXIV, rr. 1, 14—

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 81, 85 AND 90
I. L. R. 33 Mad 927

O. XXXIV, rr. 3, 6—

See LIMITATION. I. L. R. 42 Calc. 294

O. XXXIV, rr. 4, 5—

See LIMITATION. I. L. R. 42 Calc. 778

1. XXXIV, ..

S. 5, circumstances justifying the application of—S. 14, if applies to appeals The plaintiff obtained a decree on a mortgage on the 28th July 1900, the date fixed for payment being 28th January 1906. On 31st May 1909, he applied for the decree being made absolute and that application was granted. Against this the defendant appealed and the case was remanded on the 7th March 1910. Against the order of remand there was an appeal to the High Court, but the proceedings continued in the first Court and was disposed of on the 19th September 1910, the Court holding that the application for decree absolute was barred by limitation. On the 21st April 1911 the High Court dismissed the appeal against the order of remand and on the 16th May 1911 the plaintiff appealed to the lower Appellate Court against the order of the 19th September 1910. *Held*, that an application under O XXXIV, r. 5, cl (2), comes within the scope of Art 181. That the application for decree absolute was barred by limitation under Art. 181 of the Limitation Act. That the appeal to the lower Appellate Court against the order of the 19th September 1910 was also barred by limitation. That s. 14 of the

CIVIL PROCEDURE CODE (ACT V OF 1908)—
*contd*O XXXIV—*concld*

Limitation Act has no application to appeals and the present case does not come within s. 5. *BEVI SINGH v BERHAMDEO SINGH* (1915) 19 C. W. N. 473

O. XXXIV, r. 6—

See DECREE HOLDER
I. L. R. 38 Mad. 877

O. XXXIV, r. 14—

See MORTGAGE. I. L. R. 42 Calc. 780

O. XXXVII, r. 2—

See APPEAL. I. L. R. 42 Calc. 735

O. XXXVIII, r. 5; O XXXIX, r. 1, s. 94—*Injunction—Malikana dues* One *M I mort-*

an injunction restraining the judgment debtor from receiving the *malikana dues*. *Held* that the Court below was not justified in either attaching the *malikana dues* or restraining the judgment-debtor by injunction from receiving it inasmuch as all that the decree holder was entitled to do under his decree, was to have the property sold. *MUHAMMAD ISMAILULLAH KHAN v NARAIN DAS* (1915) I. L. R. 37 All. 423

O. XLI, r. 3—

See HINDU LAW—PARTITION
I. L. R. 38 Mad. 558

Procedure Code, one respondent can file a memorandum of cross objections against another. *Jadunandan Prasad Singh v Keer Kailyan Singh*, 15 C L J 61, not followed. *MUNIRAM MUDALI v ABHU REDDY* (1915) I. L. R. 38 Mad. 705

O. XLI, r. 23—

See PENSIONS ACT (XXIII OF 1871)
s. 6. I. L. R. 39 Bom. 352

O. XLI, r. 27; O. XLVII, r. 1—

See APPEAL. I. L. R. 42 Calc. 675

O. XLI, r. 27, cl. (b)—*Additional evidence on appeal—Powers of the Appellate Court—Tests to be applied for admitting—State of mind of the Judge, after hearing the appeal—No external*

that "it was necessary to have the documents before the Court to enable it satisfactorily to pronounce its judgments." *Held* that the admission of the documents as additional evidence was permissible under O. XLI, r. 27 of the Code of Civil Procedure (Act V of 1908). The test laid

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. XLI—concl'd.

down under cl. (b) of O. XLI, r. 27, is not whether any tribunal would be unable to pronounce any judgment without production of the additional evidence in question but whether the mind of the Appellate Judge is in such a condition on the evidence on record that he requires any documents to be examined to enable him to pronounce judgment. The expression 'any other substantial clause' added in O. XLI, r. 27, confers a wide discretion on the Appellate Court to admit additional evidence when the ends of justice require it to be done. *Kessowji Issur v. G. I. P. Railway Company*, I. L. R. 31 Bom. 381, explained and distinguished. *Krishnama Chariar v. Narasimha Chariar*, I. L. R. 31 Mad. 114, referred to. *Andiappa Pillai v. Muthukumara Thevan*, (1912) Mad. W. N. 450, followed. *Subba Naidu v. Ethirajammal*, 22 Mad. L. J. 14, dissented from. *AMBUJA AMMAL v. APPADURAI MUDALI* (1912) . . . I. L. R. 38 Mad. 414

O. XLI, r. 33—*Plaintiff claiming alternative reliefs obtaining a decree—Right of appeal.* A plaintiff who claims for alternative reliefs in his plaint can prefer an appeal although he obtained a decree. O. XLI, r. 33, confers on the Appellate Court the power to pass such decree as ought to have been passed. *BISWANATH GORAIN v. SURENDRA MOHAN GHOSH* (1913)

19 C. W. N. 102

O. XLIII, r. 1—*Appeal—Order dismissing an application to be substituted in an appeal in place of the original plaintiff.* Held, that an order dismissing an application to be brought upon the record as a plaintiff is not a decree and no appeal lies against such an order. *DUMI CHAND v. ARJA NAND* (1915) . . . I. L. R. 37 All. 272

O. XLV, r. 15—*Privy Council—Restoration of property pending appeal to the Privy Council—Procedure.* The word 'execution' as used in O. XLV, r. 15, was intended to cover case of restitution as well as a case of enforcement of a decree for possession or the like passed for the first time in the case on an appeal to His Majesty in Council, and a person who desires to obtain execution of any kind, whether by way of restitution or otherwise, must apply in the first instance to the Court indicated by r. 15. A decree was passed by the High Court against B who appealed to the Privy Council. During the pendency of the appeal D and others obtained possession of the property in suit from B. The Privy Council reversed the decree and B applied to the Subordinate Judge to restore him to possession of the property and filed a copy of the printed judgment of their Lordships of the Privy Council in proof of the fact that the judgment of the High Court had been reversed. Held, that the application should have been made to the High Court and the Subordinate Judge could not entertain it. Held, further, that the Subordinate Judge was not entitled to take any action

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. XLV—concl'd.

on the printed copy of the judgment of their Lordships of the Privy Council without proof that an order in Council had followed thereon. *DAMODAR DAS v. BIRJ LAL* (1915)

I. L. R. 37 All. 567

O. XLV, r. 15 and 16; O. XXI, r. 16; ss. 37, 38 and 50—*Privy Council, order of, transmitted to the original Court—Execution—Application to the original Court—Application by transferee of the decree—Competency of the original Court to entertain application—Power-of-Attorney, construction of.* Where an order of His Majesty in Council was transmitted under O. XLV, r. 15 of the Civil Procedure Code, by the High Court to the District Court as the Court which passed the first decree, the latter Court has jurisdiction to entertain an application made by an assignee of the decree under O. XXI, r. 16 of the Civil Procedure Code, to recognize the assignment and to allow him to execute the decree. It is established law that a Power-of-Attorney must be construed strictly. When an agent has a general Power-of-Attorney to act in some business or series of transactions, he may be assumed to have all usual powers, including the power to transfer decrees. *Palaniappa Chettiar v. Arunachella Chettiar*, 23 Mad. L. J. 595, distinguished. *KRISHNA-BHOOPATHI DEO v. RAJA OF VIZIANAGARAM* (1914)

I. L. R. 38 Mad. 832:

O. XLVI, r. 7—*Court of Small Causes, institution of suit in, before Judge not having Small Cause jurisdiction—Disposal of such suit as a small cause by successor in office having jurisdiction to try such suits—Reference under O. XLVI, r. 7, jurisdiction and powers of High Court in.* A suit valued at Rs. 90 was instituted in the Court of a Munsif having Small Cause Court power up to Rs. 50 and was registered as an ordinary suit. Before the suit came on for hearing the Munsif was succeeded by another Munsif who had Small Cause Court power up to Rs. 100. He tried the suit as a Small Cause Court suit and dismissed it. The defendant moved the District Judge who made a reference to the High Court under O. XLVI, r. 7, on the ground that the Munsif had no jurisdiction to try the suit as a Small Cause Court suit. Held, that on such a reference the High Court has full power to consider the matter on the merits in each case and may in the exercise of its discretion discharge such a reference even though in strict law the suit should have been tried under a different procedure. *PARMESHVARI DASSI v. JAGAT CHANDRA DASS* (1914) 19 C. W. N. 900

O. XLVII, r. 1—

1. — *Review of judgment—Adducing of further evidence not sufficient ground.* An application was made to a District Judge for a review of his order that a certain property was not the property of an insolvent. The ground upon which the application was in substance made was that if another opportunity was given to the

CIVIL PROCEDURE CODE (ACT V OF 1903)—
contd.

O. XLVII—*contd.*

applicants they would satisfy the Court that its former order was wrong. *Held*, that this was not a 'sufficient reason' for entertaining the application within the meaning of O XLVII, r. 1 of the Civil Procedure Code. *BINDA PRASAD v. RAGHUBH SARAY* (1915) . . . I. L. R. 37 All. 440

2. ————— *Application for review—Limitation—Jurisdiction to entertain.* Where the Judge having decided to modify the decision of the First Court, erroneously passed a decree dismissing the appeal, but later on on the application of the landlord modified the decree and brought it in conformity with his judgment without notice to the tenants, and on the latter's appeal the High Court directed the Judge to

office of the Judge restored the previous decree of his predecessor, and later on entertained an application for review made by the landlord; and purporting to act under s. 151 of the Civil Procedure Code passed a decree disallowing the custom so far as it permitted the tenants to appropriate the timber trees. *Held*, that the order to be reviewed was the order passed by the Judge in pursuance of the High Court's directions, both in regard to the limitation applicable to and the jurisdiction to entertain the application for review. *GURAI KAR v. RANI KUAMONI SINGHA MAY DHATA* (1915) . . . 19 C. W. N. 1183

O. XLVII, r. 1; O. XLI, r. 19— *Consequent decree obtained by fraud, setting aside of—Inherent jurisdiction of Court—Such decree if can be set aside on review—Court fee* A decree passed by

only after process in execution of the decree was taken out. *Held*, that O XLI, r. 19, had no application to the case, but the decree could be

been mistak, and the order of the lower Court should not be set aside merely because it was passed under a wrong section. That as the order could be summarily set aside by the Court, no court fee as on an application for review need have been paid on the application. *Ananda Deb v. Stevenson*, 22 W. R. 290, *Basangouda v. Churchigouda*, I. L. R. 34 Bom. 408, relied on *Gulab Koir v. Badshah Bahadur*, 13 C. W. N. 1197 s. c. 10 C. L. J. 420, referred to *PEARL CHOLDREY v. SONOO DAS* (1914) . . . 19 C. W. N. 419

O. XLVII, rr. 1, 4— *Review of judgment upon fresh evidence—Sufficient reasons not shown*

CIVIL PROCEDURE CODE (ACT V OF 1908)—
contd.

O. XLVII—*contd.*

why the evidence was not produced at trial. Where no sufficient reasons appeared on the affidavit upon

submitted. *Held*, that the application was properly rejected. *SHIVALINGAPPA BASAPPA SHIVARE v. REVAPPA* (1915) . . . 19 C. W. N. 762

O. XLVII, rr. 4 (b) (2), 7 (1) (b)—

See REVIEW . . . I. L. R. 42 Calc. 830

O. XLVII, r. 4; O. XLI, r. 11—

Appeal summarily dismissed—Application for review if may be granted without notice to respondent—Practice—Hearing of appeal, if to be restricted to

propriety of the order, and the original order of dismissal, maintain or vacate the original order of dismissal. *Seem* An order granting a review of an order of dismissal under O XLI, r. 11, without issue of notice to the respondent, if contrary to law, is not a nullity. At most it is one made irregularly or with material irregularity in the exercise of jurisdiction possessed by the Judge and cannot be ignored or vacated by the Bench hearing the appeal. When an application for review of an order of dismissal under O XLI, r. 11, is granted the hearing of the appeal cannot be restricted to the grounds which were made the basis of the application for review. *JANARINATH HOBE v. PRABHASINI DAS* (1915) . . . 19 C. W. N. 1077

O. XLVII, rr. 4, 7—

See APPEAL . . . I. L. R. 42 Calc. 433

Sch. II, ss. 15 and 18—

See AWARD . . . I. L. R. 33 Mad. 256

CIVIL RULES OF PRACTICE.

r. 14—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192. I. L. R. 38 Mad. 295

r. 277—

See CIVIL PROCEDURE CODE (ACT V OF 1903), s. 115. I. L. R. 33 Mad. 650

CLAIMANT.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 24, 62 AND 131. I. L. R. 33 Mad. 973

CO-CLAIMANTS.

Litigation expenses paid by, if recoverable from others benefited by the result. Where some of several claimants take proceedings for recovery for their own benefit, the fact that the result is also to the benefit of the other claimants does not create any implied contract or give the former an equity to be paid a share of the costs of the litigation by the latter. *Abdul Wahid Khan v. Shaluka Bibi*, I. L. R. 21 Cal. 496, and *Halima Bee v. Roshan Bee*, I. L. R. 30 Mad. 526, followed. *RAMDHARI SINGH v. PERMANUND SINGH* (1913). 19 C. W. N. 1183

CO-CONSPIRATORS.

— separate trial of—

See *CHARGE*. I. L. R. 42 Cal. 957

CO-OPERATIVE SOCIETIES ACT (II OF 1912).

— ss. 19, 20—

See *CO-OPERATIVE SOCIETY*.

I. L. R. 42 Cal. 377

CO-OPERATIVE SOCIETY.

Charge—Priority—Co-operative Societies Act (II of 1912), ss. 19, 20—Attachment—Civil Procedure Code (Act V of 1908), s. 73. Under s. 73 of the Code of Civil Procedure the claim of a co-operative society cannot be enforced unless they have a decree or charge under s. 20 of the Co-operative Societies Act (II of 1912), though under s. 19 of that Act the society might have raised an objection to the attachment by reason of other sections of the Code of Civil Procedure. *ABDUL QUADIR v. SHANBAZPUR CO-OPERATIVE BANK* (1914). I. L. R. 42 Cal. 377

CO-PARCENER.

See *HINDU LAW—ADOPTION*.

I. L. R. 38 Mad. 1105

See *HINDU LAW—ALIENATION*.

I. L. R. 38 Mad. 1187

See *HINDU LAW—JOINT FAMILY*.

I. L. R. 38 Mad. 684

See *HINDU LAW—WILL*.

I. L. R. 39 Bom. 593

CO-SHARER.

See *ACQUIESCENCE*.

I. L. R. 37 All. 412

COCAINE.

See *POST OFFICE ACT* (VI OF 1898), ss. 19, 61, 70. I. L. R. 37 All. 289

COERCION.

See *SPECIFIC RELIEF ACT* (I OF 1877), s. 39. I. L. R. 39 Bom. 149

COLLECTOR.

See *CIVIL PROCEDURE CODE* (ACT V OF 1908), s. 92. I. L. R. 39 Bom. 580

See *INCOME TAX*.

I. L. R. 42 Cal. 151

COLLECTOR OF BOMBAY.

— office of—

See *BOMBAY CITY LAND REVENUE ACT* (BOM. II OF 1876), ss. 30, 35, 39, 40.
I. L. R. 39 Bom. 664

COLLECTOR'S CERTIFICATE.

See *PENSIONS ACT* (XXIII OF 1871), s. 6
I. L. R. 39 Bom. 352

COLLUSION.

See *ASSIGNEE OF A MONEY-DECREE*.

I. L. R. 38 Mad. 36

COLONIAL COURTS OF ADMIRALTY ACT, 1890 (53 & 54 VICT., C. 27).

— ss. 2 (3) (a), 35—

See *ARREST OF SHIP*.

I. L. R. 42 Cal. 85

COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE (VI OF 1914).

— s. 3—

See *TRADING WITH THE ENEMY*.

I. L. R. 42 Cal. 1094

COMMISSION.

See *ADMINISTRATOR GENERAL'S ACT* (II OF 1874), ss. 20, 52, 54.

I. L. R. 38 Mad. 1134

See *PARDANASHIN, EXAMINATION OF*.

I. L. R. 42 Cal. 19

COMMITMENT.

See *APPROVER*. I. L. R. 42 Cal. 856

Duty of Magistrate to examine witnesses not produced but whom the accused is prepared to produce after process—Application to summon witnesses and for time to file documents made after the commitment order—Criminal Procedure Code (Act V of 1898), s. 208—Practice. A Magistrate is bound, before passing an order of commitment, to examine all the witnesses produced by the accused but not those whom he is prepared to produce after process obtained for their appearance. *Queen-Empress v. Ahmadi*, I. L. R. 20 All. 264, referred to. *Emperor v. Muhammad Hadi*, I. L. R. 26 All. 177, dissented from. A Magistrate does not act illegally, under s. 208 of the Criminal Procedure Code, in refusing an application for summons on witnesses and for time to file documents, made after the order of commitment has been passed. *EMPEROR v. SURATH* (1914). I. L. R. 42 Cal. 608

COMMON CARRIERS.

— by sea—

See *BILL OF LADING*.

I. L. R. 38 Mad. 941

COMPANIES ACT (VI OF 1882).

See *COMPANY*. I. L. R. 39 Bom. 331

— ss. 67, 96, 123—*Contracts entered into by companies—Agreement to refer to arbitration—Whether seal of the Company necessary. Held*

COMPANIES ACT (VI OF 1882)—*concl.*s. 67—*concl.*

that s. 96 of the Indian Companies Act, 1882, did

LD., *THE NURI MIAH (1915) I. L. R. 37 All. 273*

ss. 128, 129—

See COMPANY . I. L. R. 39 Bom. 47

ss. 128, 131—

See COMPANY . I. L. R. 39 Bom. 16

s. 254—

See COSTS . I. L. R. 39 Bom. 383

COMPANY.

See COSTS . I. L. R. 39 Bom. 383

See PROVIDENT INSURANCE.

I. L. R. 42 Calc. 309

contracts by—

See COMPANIES ACT (VI OF 1882).

ss. 67, 96, 123 I. L. R. 37 All. 273

1. Directors—Appointment

of a director as officer under the company—Personal interest of a director clashing with his duty to shareholders—Meeting of directors—No right for such director to vote on his appointment—Invalidity of appointment if no quorum of directors without counting him—Duties of an editor of a newspaper—Incapacity to perform—Propriety of dismissal for incapacity. The directors of a company are agents of the company and trustees for the shareholders of the powers committed to them. A director who has an interest in the subject of discussion of a meeting of the directors in which his interests conflict with his duty to the shareholders is incompetent to vote. Hence even when the articles of association of a company may permit a director to hold any other office under the company in conjunction with his directorship on such

have the unbiased and independent advice of at least such a number of the directors as would without him have made a quorum. A person appointed as co editor of a newspaper should put forth or publish the paper and exercise a general supervision over the matter which is written for the paper or extracted as news. For this, certain literary and business qualifications are necessary. If he is absolutely incapable of performing these duties which the company has a right to expect of him, his dismissal on that account from co-editorship is right. RAMASWAMI IYER v. THE MADRAS TIMES PRINTING AND PUBLISHING CO., LTD. (1913)

I. L. R. 38 Mad. 991

COMPANY—*cont.*

2.

Manager or managing agent's authority to buy liability of stronger or manager or manager's partner—Express and implied authority. The manager or managing director of a Mill Company has no implied authority to purchase, on behalf of his mill, the liability of a stranger still less of their own manager or manager's partner in a private transaction of his own. MOTILAL SHIVLAL v. THE BOMBAY COTTON MANUFACTURING COMPANY, LD. (1913)

19 C. W. N. 621

3.

Winding up—List of contributories—Minor—Estoppel by conduct after attaining majority—Indian Companies Act (VI of 1882). F, a minor, applied for and was allotted certain shares in a limited company. He received dividends, and continued to do so after attaining majority. On the winding up of the company he was included in the list of contributories. Held, that, having intentionally permitted the company to believe him to be a shareholder and in that belief to pay him dividends since he attained majority, he was estopped by his conduct while a person sui juris from denying as between himself and the Company that he was a shareholder. View of *Stirling J. in Re Newland Consols, Limited (No. 2), 58 L. T. 922*, adopted. A minor may be a member of a company under the Indian Companies Act (VI of 1882). EASTLUND JAFFER v. THE CREDIT BANK OF INDIA, LD. (1914) . I. L. R. 39 Bom. 331

4.

Companies Act (VI of 1882), ss. 123, 129—Compulsory winding up—Creditor's petition—Company's inability to pay its debts. The petitioner who was an assignee of certain debts due by the defendant Company to its late Secretary and Manager, demanded payment from the Company. The Company refused to pay on the ground that the demand was in respect of a claim which the Company honestly believed to be a fraudulent claim and unsustainable at law. The petitioner thereupon applied to the Court to compulsorily wind up the affairs of the Company. It was not shown that the Company was unable to pay its debt in full. The lower Court having rejected the application, the petitioner appealed. Held, that the application was rightly rejected, for the petitioner's object, in making the application, was to bring the pressure of insolvency proceedings to bear upon the Company in order to make it pay cheaply and expeditiously a heavy debt which it deared to dispute in the Civil Courts. The principle upon which a Company can be wound up on a creditor's application is simply its inability to pay its just debts. The inability is indicated by its neglect to pay after proper demand made and the lapse of three weeks. Such neglect must be judged by reference to the facts of each particular case. Where the defence is that the debt is disputed all that the Court has first to see is whether that dispute is on the face of it genuine or merely a cloak of the Company's real inability to pay just debts. TITSBAD LALIT.

COMPANY—concl'd.

BHAI v. THE BHARAT KHAND COTTON MILL COMPANY, LTD. (1914) . I. L. R. 39 Bom. 47

5. ————— Indian Companies Act (VI of 1882), ss. 128 and 131—Winding up—Petition for compulsory winding up of company by the Court—Grounds to be alleged in petition—Internal mismanagement of the company not such grounds—Admission of petition, discretion of Court as to—Shareholder, petition by. Any ground alleged under s. 128 (e) of the Indian Companies Act in a petition for the winding-up of a company presented under s. 131 of that Act must be of a like nature to the specific grounds given under cls. (a), (b), (c) and (d) of s. 128. If any other grounds are alleged they do not fulfil the requirements of the Act. Allegations as to the internal management or mismanagement of a company are matters for the shareholders to deal with and do not call for the interference of the Court. A petition by a shareholder stands in a different footing to a petition by a creditor and should be more closely scrutinized on presentation. There is no obligation on the Court to admit a petition merely because it is presented. Not only must a petition allege facts which, if proved, would justify an order for winding up a company but even if it alleges such facts the Judge has a discretion to consider whether it is really *bona fide*. The Court may, if it thinks fit, refuse to admit a petition, or, as an alternative course, give the company concerned notice that a petition has been presented, so that it may take proceedings to restrain the petitioner from proceeding with his petition. PIONEER BANK LIMITED, *In the matter of the* (1914) . I. L. R. 39 Bom. 16

COMPENSATION.

—See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.

I. L. R. 38 Mad. 959

See ELECTRICITY ACT (IX OF 1910), ss. 14, 19 . I. L. R. 39 Bom. 124

See LAND ACQUISITION ACT (I OF 1894), ss. 35 AND 36, CL. (2).

I. L. R. 37 All. 347

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), ss. 5, 19.

I. L. R. 38 Mad. 589

— for wrong to land—

See JURISDICTION.

I. L. R. 42 Calc. 942

— order for—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 250, 423.

I. L. R. 38 Mad. 1091

COMPLAINANT.

— Absence of complainant
— Cause called on by mistake on date not fixed for hearing—Order of acquittal—Effect of such order—Jurisdiction of Magistrate to proceed with trial there-

COMPLAINANT—concl'd.

after—Criminal Procedure Code (Act V of 1898), s. 247. An order of acquittal under s. 247 of the Criminal Procedure Code passed by mistake on a date not fixed for the hearing of the case, for absence of the complainant, is a mere nullity, and does not debar the Magistrate from proceeding with the trial on the discovery of the error. *H. C. Proceedings, 17 Aug. 1875, 2 Weir 307*, followed. *Suresh Chandra Sinha v. Banku Sadhukhan, 2 C. L. J. 622*, distinguished. *ACHAMBIT MANDAL v. MAHATAB SINGH, (1914) . I. L. R. 42 Calc. 365*

COMPLAINT.

See CRIMINAL PROCEDURE CODE, ss. 145 AND 522 . I. L. R. 37 All. 654

See FALSE AND VEXATIOUS COMPLAINT.

— Personal presentation of complaint—Complaint of defamation presented by alleged agent of *pardanashin* but not signed by her—Power of attorney not filed in Court—Necessity of examination of complainant before issue of process—Examination of *pardanashin* on commission—Criminal Procedure Code (Act V of 1898), ss. 198, 200, 503 —“At once.” The words “at once” in s. 200 of the Criminal Procedure Code clearly indicate that a complaint must ordinarily be presented in person, otherwise a Magistrate should be very loath to take cognisance, and should not accept a complaint, not signed by the alleged complainant and not preferred by a person duly authorized to institute the specific complaint. No process can be issued against the accused, either by the Magistrate first taking cognisance, or by the Magistrate to whom the case is transferred, unless and until the Magistrate issuing it has first examined the complainant, and this course is the more necessary in the case of a *pardanashin* to enable the Magistrate to satisfy himself that the complaint is really her action. When a *pardanashin* makes a complaint, the Magistrate may take cognisance, if satisfied that it is really her complaint, by whatever means it reaches him. When it is presented on her behalf, the Magistrate may, under s. 503 of the Code, issue a commission for the examination required by s. 200. S. 503 is very wide in its terms, and refers not only to an inquiry or trial but to any other proceeding, and authorises the examination of any “witness,” which includes a complainant. Where a written complaint of defamation was presented by an alleged agent on behalf of a *pardanashin*, but it was not signed by her, nor was any power of attorney filed before the Magistrate, and he issued process without examining the complainant: *Held*, that he had no power to issue process in such a case. *ABHAYESWARI DEBI v. KISHORI MOHAN BANERJEE (1914)*

I. L. R. 42 Calc. 19

COMPOSITION OF OFFENCE.

See CRIMINAL PROCEDURE CODE, s. 345.
I. L. R. 37 All. 127

COMPROMISE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 48. I. L. R. 39 Bom. 258

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, r 3

I. L. R. 38 Mad. 850, 959

See CRIMINAL PROCEDURE CODE, s 345 AND 439. I. L. R. 37 All. 419

Compromise of suit relating to mortgages—Agreement of compromise not registered and not incorporated in decree—Suit for redemption of mortgages—Agreement for extinction of equity of redemption and for division of properties among the parties to mortgage deeds—Agreement of compromise given effect and carried out by acts and conduct of parties though document is ineffective to prove contract—Principle that Court will uphold a contract carried into effect by acts and conduct of parties In this case the Judicial Committee (affirming the decision of the High Court) held, in a suit for the redemption of two mortgages executed in 1848 and 1871 respectively between the predecessors in title of the parties, that the equity of redemption had under the circumstances been extinguished. In 1870 an agreement was come to by the then representatives of the mortgagor and mortgagee in reference to the mortgage of 1848. Sums were fixed as being the principal and the interest due and arrangements were made for payment by yearly instalments and for the management of the property. In 1873 differences arose between the parties to that agreement, and the mortgagee brought a suit to enforce it.

and a decree was made by the Court that 'the suit be decided in pursuance of the terms of the compromise, and the suit be struck off from the list of cases.' No conveyances were executed by the mortgagor in completion of the contract, but that effect in the compromise, nor was the agreement of compromise registered nor its terms incorporated into the decree, but it was acted upon and carried out by all the parties to it, and by their successors in title, and for a period of 30 or 40 years prior to the present suit the rights of all the parties had been dealt with upon the same footing as if the mortgagor had made an express conveyance parting with the equity of redemption, and transferring allotted shares of the property thereto to the mortgagees, and reserving one share to himself. Held, that if the agreement of compromise was defective as not being registered the decree had been obtained only on one footing, namely that the parties to the suit had in fact arranged their rights in the property in terms of the compromise. And even though the compromise and the decree taken together were considered to be defective or inchoate as statements making up a bargain validly concluded agreement for the extinction of the equity of redemption, the acts of the parties had been such as to supply all defects.

COMPROMISE—*concl'd*

When the acts and conduct of the parties are founded upon, as in the performance or part performance of an agreement, the *locus sententie* which exists in a situation where the parties stand upon nothing but an engagement which is not final or complete, is excluded. For equity will support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon. The principles laid down in *Maddison v Alderson*, L. R. 3 A. C. 467, Pell & Commentaries, 10th Ed., s. 26 and *Potter v Potter*, 1 Ves. Sen. 437, followed. There was nothing in the laws of India inconsistent with these principles, on the contrary those laws followed the same rule. *MAHOMED MISA v AGHORE KUMAR GAYLI* (1913)

I. L. R. 42 Calc. 501

COMPUTATION OF TIME.

See LEAVE TO APPEAL TO PRIVY COUNCIL. I. L. R. 42 Calc. 35

CONDITIONAL CONSENT.

by Collector—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 52. I. L. R. 39 Bom. 560

CONDITIONAL OFFER.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, r 3

I. L. R. 38 Mad. 959

CONDITIONAL ORDER.

See PUBLIC NUISANCE.

I. L. R. 42 Calc. 702

CONFESSION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 235 AND 242

I. L. R. 38 Mad. 302

See EVIDENCE ACT (I OF 1872), s. 30

I. L. R. 37 All. 247

by co-accused—

See BAIL. I. L. R. 42 Calc. 25

See JURY TRIALS.

I. L. R. 42 Calc. 789

CONFISCATION.

*Cargo—Enemy ship—Cargo shipped by British subjects before declaration of war—War declared whilst cargo at sea—Cargo assigned to German merchants (in one instance to British merchant)—Destination (Enemy Port)—Contracts C. I. & —Money advanced by British Banks against documents of title—Property in goods at the time of capture. On August 4th, 1914, war was declared between Great Britain and Germany. Before the declaration of war H. S. & Co., British subjects, had shipped some bales of jute to a German ship, the S.S. *Rajpense*, of the Hansa Line, and had consigned the goods to D. C. & Co., British merchants. G. & Co. and G. W. & Co. had also*

CONFISCATION—concl'd.

shipped goods by the same ship but had consigned the goods to German merchants. The *Rappenfels* was captured at sea after the declaration of war and condemned as good and lawful prize at Colombo. The *Rappenfels* was sent to Calcutta to have the liability of the cargo to condemnation determined by the High Court at Fort William in Bengal. Messrs. H. S. N. C. & Co., G. & Co. and G. W. & Co. submitted claims for the release of their goods. These claims were disputed by the Crown:—*Held*, (i) that in determining the question of liability of the goods to confiscation, regard must be had to the property in the goods and not to the risk except so far as it may assist the Court in determining the answer to the question—"To whom did the goods belong at the time of capture"? (ii) that the sellers did not pass the property in the goods to the buyers at the time of appropriating the goods to the contract; and (iii) that in the circumstances the property in the goods was in the sellers, and they were not liable to be confiscated. *RE CARGO ex S.S. "RAPPENFELS"* (1914)

I. L. R. 42 Calc. 334

CONSENT.

See ACQUIESCENCE I. L. R. 37 All. 412

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . I. L. R. 39 Bom. 580

See CONSENT OF COURT.

See CONSENT OF PARTIES.

See EVIDENCE . I. L. R. 38 Mad. 160

——— of landlord—

See TRANSFERABILITY.

I. L. R. 42 Calc. 172

CONSENT OF COURT.

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 42 Calc. 351

CONSENT OF PARTIES.

See JURISDICTION. I. L. R. 42 Calc. 116

CONSIDERATION.

See PROMISSORY NOTE.

I. L. R. 37 All. 99

I. L. R. 38 Mad. 680

CONSOLIDATED RATE.

See RATES AND TAXES.

I. L. R. 42 Calc. 625

CONSOLIDATING STATUTE.

——— construction of—

See EXECUTION . I. L. R. 38 Mad. 199

CONSPIRACY.

See CHARGE . I. L. R. 42 Calc. 957

See CRIMINAL CONSPIRACY.

See MARRIAGE, CONTRACT OF.

I. L. R. 39 Bom. 632

Procedure—*Criminal conspiracy—Separate trial.* A person may be guilty

CONSPIRACY—concl'd.

of criminal conspiracy even though the illegal act, which he has agreed to do, has not been done, for "the crime of conspiracy consists only in the agreement or confederacy to do an illegal act by legal means or a legal act by illegal means." *Reg. v. Hibbert*, 13 Cox. 82, *Quinn v. Leatham*, [1901] A. C. 495, *The Queen v. Most*, 7 Q. B. D. 244; 14 Cox. 583, and *O'Connell v. The Queen*, 11 Cl. & F. 155; 1 Cox. 413; 5 St. Tr. N. S. 1, referred to. The indictment in all cases of conspiracy must in the first place charge the conspiracy, but in stating the object of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed. *The King v. Gill*, 2 B. & Ald. 204, *The Queen v. Kenrick*, 5 Q. B. 49, *The Queen v. Blake*, 6 Q. B. 126, *Sydserrff v. The Queen*, 11 Q. B. 245, *The Queen v. Gompertz*, 9 Q. B. 824; 2 Cox. 145, *Aspinall v. The Queen*, 2 Q. B. D. 48, *Taylor v. The Queen*, [1895] 1 Q. B. 25, *Reg. v. Parker*, 3 Q. B. 292, referred to. If all the known co-conspirators named in the charge are not placed on their trial, the trial of some (separately) without the others is not vitiated. *Emperor v. Lalit Mohan Chuckerbutty*, I. L. R. 38 Calc. 559; 15 C. W. N. 593, explained. *AMRITA LAL HAZRA v. EMPEROR* (1915) . I. L. R. 42 Calc. 957

CONSTRUCTION.

See HINDU LAW—WILL.

I. L. R. 42 Calc. 561

See LIMITATION . I. L. R. 38 Mad. 101

——— of deed of sale executed by Hindu widow——

See HINDU LAW—ALIENATION.

I. L. R. 37 All. 369

——— of deeds executed by natives of India——

See HINDU LAW . I. L. R. 37 All. 369

CONSTRUCTION OF DEED.

Simultaneous execution of sale-deed and agreement to reconvey—*Transaction amounts to mortgage by conditional sale.* The land in dispute was sold by the defendants to the plaintiff's father on the 7th November 1892 for Rs. 300. On the same day, the latter agreed with the defendants that if they repaid Rs. 300 in five years, he would re-sell the land to them. From 1895 the defendants were in possession of the land as tenants of the plaintiffs and paid Rs. 18 as rent every year. In 1910, the plaintiffs sued to recover possession of the land. The defendants claimed to redeem the lands alleging that the transaction of 1892 amounted to mortgage. The first Court held that the transaction was a mortgage and allowed redemption; but the lower appellate Court held that it was a sale and decreed plaintiffs' claim. The defendant having appealed:—*Held*, reversing the decree, that in view of the facts and the contemporaneous nature of the two documents the proper construction would be that they constituted conditional sale, and that the real intention of the

CONSTRUCTION OF DEED—*cond*

parties was to effect a mortgage by conditional sale by the contemporaneous execution of the two documents of sale and re sale MADHAVRAO KESHAYRAO & SAHEBRAO GANPATRAO (1914)

I. L. R. 39 Bom. 119

CONSTRUCTION OF DOCUMENT.

See WILL . . . I. L. R. 37 All. 42

Mortgage of stock in trade of business—Schedule of stock in trade forming part of mortgage. Where the stock in trade of a business was mortgaged as security for a loan and a list of the specific articles of which it consisted was attached to the mortgage deed *Held*, that the mortgage did not include stock acquired after the date of the mortgage to replace that which had been sold *Tayfield v Hillman, 6 Man & Gr 245, and Collman v Chamberlain, 25 Q B D 328, referred to ROBERT WILLIAM ANDERSON & BANK OF UPPER INDIA, LIMITED (1915) . I. L. R. 37 All. 390*

CONSTRUCTION OF LEASE AND SANAD.

See RESUMPTION

I. L. R. 39 Bom. 270

CONSTRUCTION OF STATUTES.

See MUSSALMAN WAKF VALIDATING ACT (VI OF 1913), s 3

I. L. R. 39 Bom. 583

See STATUTES, CONSTRUCTION OF

CONSTRUCTIVE NOTICE.

See RATES AND TAXES

I. L. R. 42 Calc. 625

CONTEMPT OF COURT.

Practice—Appeal—As arising in contempt—Procedure. Where the prohibition on the defendant firm made no

on the merits) that there had been no contempt or participation in contempt on J's part, so all that he did had been done prior to the injunction MARSHALL v. GRANDHI VENGATA RATNAM (1915)

I. L. R. 42 Calc. 1163

CONTENTIOUS MATTER.

See INSOLVENCY I. L. R. 42 Calc. 109

CONTINUOUS ACCOUNT.

See CHEQUE, PAYMENT BY

I. L. R. 42 Calc. 1043

CONTRACT.

See ARBITRATION

I. L. R. 42 Calc. 1140

CONTRACT—*cond*

See COMPROMISE.

I. L. R. 42 Calc. 801

See CONTRACT ACT (IX OF 1872)

See HINDU LAW—ADOPTION

I. L. R. 39 Bom. 528

See UNDUE INFLUENCE

I. L. R. 42 Calc. 286

By members of Hindu joint family—

See HINDU LAW—JOINT FAMILY.

I. L. R. 39 Bom. 715

incapacity to make—

See HINDU LAW—MINOR

I. L. R. 38 Mad. 166

of pre-emption—

See PRE EMPTION

I. L. R. 38 Mad. 114

to sell—

See CONTRACT ACT (IX OF 1872), ss. 39, 50, 64, 65, 73, 74 AND 75

I. L. R. 38 Mad. 178

See HINDU LAW—ALIENATION

I. L. R. 38 Mad. 1167

to sell goods without authority—

See LIMITATION ACT (XV OF 1877), s. 11, ARTS 36, 115, 120

I. L. R. 38 Mad. 275

1. Breach of contract—Damages, ascertainment of—Earned money, deposit of, forfeiture of—Credit for forfeited amount Where a person deposits a certain amount as earnest money for the due performance by him of his part of the contract under which he agrees to pay the other party a certain sum but breaks the contract thereafter, the other party who becomes entitled to retain the deposit as forfeited under the terms of the damages for the amount recover the amount of the forfeited deposit.

Ockenden v Henly, I. L. R. & L. 455, s. c. 27 L. J. Q. B. 361, followed. VELLORE TALUK BOARD v. GOPALASWAMI NAIDU (1914)

I. L. R. 38 Mad. 801

2. Breach of contract—Damages, ascertainment of—Property in contract

by levied and having failed to do so in consequence of which the plaintiff's properties were attached. Held, that on the defendant's failure to pay the plaintiff according to his contract, the plaintiff was entitled to sue at once and recover substantial damages. RAMALINGAIAH DAYAR v. LAKSHMALAIAH (1914) . . . I. L. R. 38 Mad. 791

CONTRACT—contd.

3. ————— *Interpretation of.*
Contracts should be interpreted by themselves and it is improper to interpret one contract by reference to another because they may seem to differ very little, as it may result in identifying contracts which are wholly different. *Gobboy v. Aveloom*, I. L. R. 17 Calc. 449, distinguished. *Southwell v. Bowditch*, L. R. 1 C. P. D. 374, followed. *PATIRAM BANERJEE v. KANKINARRA CO., LD.* (1915) . . . 19 C. W. N. 623

4. ————— *Privity of contract—Right of third parties to sue on covenant in lease.* Where on a lease of certain muafi land the lessees undertook, as between themselves and their lessor, to be responsible for the payment to the zamindars of certain sums which the muafidar was primarily bound to pay: *Held*, that the zamindars could not enforce this covenant by suit against the lessees. *Khwaja Muhammad Khan v. Husaini Begam*, I. L. R. 32 All. 410, *Touche v. The Metropolitan Railway Warehousing Company*, L. R. 6 Ch. App. 671, and *Debnarayan Dutt v. Chhunilal Ghose*, I. L. R. 41 Calc. 137, distinguished. *MANGAL SEN v. MUHAMMAD HUSAIN* (1914) I. L. R. 37 All. 115

5. ————— *Specific performance of contract, suit for—Contract alleged not proved, but another found by Court—Decree for specific performance or damage, if lies.* The principle upon which the Court refuses specific performance of a contract, not the subject-matter of the suit, is equally applicable to the claim for damages for breach of that contract. The principle on which damages are decreed in a suit for specific performance considered. *NILKANTA RAI CHAUDHURI v. LALIT MOHAN BANERJEE* (1915) 19 C. W. N. 933

6. ————— *Stranger's right of suit on—Family settlement—Trust—Provision for nuptials of plaintiff, a daughter of the family—Her right of suit though not a party to the contract.* A person though not a party to a contract can sue to enforce the terms thereof if it be a family settlement by which some provision is made for him or her as a member of the family (e.g.) for maintenance or marriage, though the same is not made a charge upon the family properties. *Iswaram Pillai v. Taregan*, 26 Mad. L. J. 127, distinguished. If the contract constitutes by its terms a trust in favour of the plaintiff, a stranger to the contract, a suit to enforce such trust is beyond the cognisance of a Court of Small Causes. *SUNDARARAJA AIYANGAR v. LAKSHMIAMMAL* (1914)

I. L. R. 38 Mad. 788

7. ————— *Stranger to the contract—No right of suit, on the contract, generally.* A mortgaged his lands to B, part of the consideration therefor, being B's promise to discharge a debt of A to C. *Held*, that C who was a stranger to the contract cannot sue B for the payment of his debt without joining A as a party. *Per curiam.* The following are some of the circumstances under which a stranger to a contract can sue the promisor:—(a) the creation of a trust in favour of the

CONTRACT—concl'd.

plaintiff in respect of the amount sued for; (but a direction to pay, as in the present case, does not of itself create an express or constructive trust, owing to the absence of the elements necessary to constitute a trust); (b) the creation of a charge on immoveable property by the promisor or allocation by the promisor of the specific money in suit in favour of the plaintiff; (c) the creation of a settlement on marriage, in which the plaintiff may be beneficially entitled, as provided by s. 23 of the Specific Relief Act: and (d) estoppel as against the promisor, owing to transactions between the plaintiff and the promisor. *Khwaja Muhammad Khan v. Husaini Begam*, I. L. R. 32 All. 410, and *Debnarain v. Ramasadhan*, 17 C. W. N. 1143, distinguished. *ISWARAM PILLAI v. SONNIVARU TARAGAN* (1913) : I. L. R. 38 Mad. 753

CONTRACT ACT (IX OF 1872).

s. 16, cl. (2)—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.

I. L. R. 38 Mad. 850

ss. 16, 19—

See UNDUE INFLUENCE.

I. L. R. 42 Calc. 286

ss. 16, 74 illus. (f)—

See INTEREST.

I. L. R. 42 Calc. 652, 690

s. 23—

See BILL OF LADING.

I. L. R. 38 Mad. 941

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 538

ss. 23, 65—*Agreement for consideration to procure appointment to a public office—Failure to fulfil promise—Suit to recover amount paid, if lies—Pari delicto, parties—Refund.* Any contract to appoint one to a public office or involving the sale of a public office or securing an office for the promisor or recommending him for such office is opposed to public policy. Such contracts are void without reference to the question whether improper means are contemplated or used in their execution. *Pichakutty v. Narayanappa*, 2 Mad. H. C. R. 243, distinguished and doubted. Where the contract alleged was that the defendant, a Nazir of a District Judge's Court, was, in consideration of plaintiff paying him Rs. 150, to provide the latter's son with the post of a permanent peon within two years, and the suit was to recover Rs. 100 alleged to have been paid by plaintiff as aforesaid on the ground that the defendant had failed to perform his promise within the time stipulated: *Held*, that the parties in this case being clearly in *pari delicto*, the Court would not assist the plaintiff to recover the money. Although where money has been paid under an unlawful agreement but nothing else done in performance of it, the money may be recovered back, this exception will not be allowed if the agreement is actually criminal or immoral. S. 65 of

CONTRACT ACT (IX OF 1872)—*contd.*s. 23—*concl'd*

the Contract Act apply only in cases of agreements which are subsequently found to be void on account of some latent defect or of circumstances unknown at the date of the agreement or of an agreement which is afterwards made void by circumstances which supervene. **LEDU COACHMAN v HIRALAL BOSE (1915) 19 C. W. N. 919**

s. 26—*Kabinnamah—Authority given by Mahomedan husband to wife to divorce on husband*

under s. 26 of the Contract Act. It is lawful for a Mahomedan husband to delegate to his wife power to divorce on certain conditions and the husband marrying a second wife in such a condition. **Badarannissa v Majidala, 7 B. L. R. 342, and Ayatunnessa v Karam Ali, 12 C. W. N. 907, referred to MAHARAM ALI v ARASA KHATUN (1915) 19 C. W. N. 1226**

s. 27—*Agreement in restraint of trade—Mutual agreement between two neighbouring land owners not to hold cattle markets on the same day Held of no effect not*

of them, is not an agreement to which the principle of s. 27 of the Indian Contract Act, 1872, applies. **POTHI RAM v ISLAM FATIMA (1915)**

I. L. R. 37 All. 212

s. 37—

See DAMDUTAT, RULE OF

I. L. R. 42 Cal. 626

ss. 38, 54—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, r. 3

I. L. R. 38 Mad. 959

ss. 39, 55, 64, 65, 73, 74 and 75—*Vendor and Purchaser—Right to recover deposit 'forfeited' by terms of a contract to sell. A entered into a contract on 24th February 1903 with B for the purchase of lands belonging to the latter for Rs. 41,000. Of this amount Rs. 4,000 was paid in advance, Rs. 20,000 was agreed to be*

delay on the part of the purchaser. It was also stipulated that the vendor was to execute the conveyance either in favour of the purchaser or those nominated by him. In part performance of this contract a sale of a portion of the lands was effected in favour of M on the 25th March 1903. Just before the day for payment, B gave notice to A that if the sale was not completed on or before the agreed date, the contract would be avoided. A failed to perform the contract before that date. Subsequently B sold the lands to third

CONTRACT ACT (IX OF 1872)—*contd.*s. 39—*corcl'd*

parties and realised Rs. 1,500 in excess of the price stipulated by A. A brought a suit for the

deposit of Rs. 4,000 to A. B appealed. *Held*, by the Court (SADASIVA AYYAR, J., dissenting) that A, the plaintiff, was not entitled to a return of the deposit. Neither s. 64 nor s. 74 of the Indian Contract Act (IX of 1872) is applicable to such a deposit, and a stipulation for its

A vendor can be given relief by way of rescission of contract and at the same time, in the absence of express stipulation to the contrary, may be allowed to retain the deposit. *Hovee v Smuh, L. R. 27 Ch. D. 59, applied Per WHITE, O.J.—(i) The last rule would apply a fortiori, when, as in this case, there is an express agreement to forfeit the deposit. (ii) Since the Judicature Acts the question*

forfeit is not wanting in consideration as the deposit is not made as part payment but as security for the purpose of binding the bargain. *Per SADASIVA AYYAR, J.—A was entitled to recover the deposit under the Indian Contract Act which is exhaustive as regards the law of Vendor and Purchaser and the English law is not applicable. A stipulation to forfeit a deposit is a stipulation to pay a penalty. Time was of the essence of the contract in this case. NATASA AYYAR v AITAYU PADAYACHI (1913)*

I. L. R. 38 Mad. 176

priorities the payment to the earliest debt. See ss. 59 to 61 of the Indian Contract Act enacted the rule of the Civil Law as laid down in *Clayton's Case, 1 Mer. 572, 604*, with certain modification. **KUNDAN LAL v JAGANNATH (1913)**

I. L. R. 37 All. 649

ss. 64, 66—

See LIMITATION ACT (XV OF 1877), Sec. II, Art. 91. I. L. R. 33 Mad. 321

s. 65—

See BHAGDARI AND NARWADARI TENDUKES ACT (BOM. V OF 1921) s. 3.

I. L. R. 39 Bom. 335

CONTRACT ACT (IX OF 1872)—contd.

s. 70—*Applicability of, regardless of English descent.* Plaintiff's father made a gift of a village to the defendant, the condition being "we (the plaintiff's father) should get the village sub-divided in your (donee's) name; you should pay to the Government the peshkash fixed there-upon according to the sub-division." *Held*, that the defendant was bound to pay his portion of the peshkash only from the time of the sub-division when alone the exact amount due by the defendant was ascertained; and that plaintiff who had paid the whole peshkash was entitled to recover from the defendant under s. 70 of the Indian Contract Act whatever the defendant was liable to pay after the sub-division. S. 70 of the Indian Contract Act should be applied in all cases where the requirements of the section are fulfilled, whatever might be the English Law on the subject. A person must be said to have enjoyed the benefit of an act within the meaning of s. 71 of the Indian Contract Act, when he in fact enjoys the benefit by accepting or adopting it, without objecting to it. S. 70 does not require that the defendant must have an option of declining the benefit if that means that before the benefit is conferred he must be given the choice of accepting or declining it. *Per MILLER, J.*—The law that plaintiff's interest also might have suffered if the act was not done will not make the act any the less one done for the defendant. *Narasimhaiah Naidu v. Sri Rajah Vellanki Sreenivas Jagannatha Rao*, I. L. R. 33 Mad. 189, and *Yegambal Boyer Ammani Ammal v. Naina Pillai Marikar*, I. L. R. 33 Mad. 15, referred to. *Per SADASIVA AYYAR, J. Obiter*: If the benefit conferred is inseparably accompanied by onerous obligations that a reasonable man would refuse to accept, s. 70 will not apply. *Damodara Mutalikar v. Secretary of State for India*, I. L. R. 18 Mad. 48, and *Jogurain v. Badri Das*, 16 C. L. J. 156, followed. *Yegambal Boyer Ammani Ammal v. Naina Pillai Marikar*, I. L. R. 33 Mad. 15, dissented from. *Abdul Wahid Khan v. Shaluka Bibi*, I. L. R. 21 Cal. 196, and *Ram Tukul Singh v. Rameshwar Lall Sahoo*, 2 I. A. 131, distinguished. *Rajah of Vizianagaram v. Rajah Setucherlaraz Somasakara*, I. L. R. 26 Mad. 686, referred to. **SRI SHI SRI CHANDRA DEO v. SRINIVASA CHARLU** (1913) . . . I. L. R. 38 Mad. 235

s. 72—

See INCOME TAX.

I. L. R. 42 Cal. 151

Money paid under compulsion of legal proceedings cannot be recovered. *Marriot v. Hampton*, 7 T. R. 269, followed. **BISWANATH GORAIN v. SURENDRA MOHAN GHOSE** (1913) . . . 19 C. W. N. 102

s. 73—*Lessee of zamindari property undertaking to pay Government revenue payable by lessor—Default—Sale for arrears of revenue—Measure of damages.* Where a lessee of zamindari property undertook to deposit the Government revenue payable by the lessor and the property

CONTRACT ACT (IX OF 1872)—contd.

s. 73—contd.

was sold for arrears of revenue upon the lessor's failure to do so, and it appeared that the lessor was not only not aware of the lessee's default but that the lessee deliberately allowed the estate to be sold and never intimated the danger to the lessor: *Held*, that there was no room for the application of the doctrine that a plaintiff is not entitled to damages for breach of contract when by use of reasonable precautions he might have avoided loss. In the lease which covered only a portion of the zamindari there was a clause that a separate account of the portion leased was to be opened at the lessee's instance and the loss on account of sale for arrears of revenue was to be assessed at Rs. 500. But no separate account was opened, and on default of payment of revenue by the lessee, the whole estate was sold. *Held*, that the measure of the loss sustained by the lessor was the market value of the estate sold. **ROHIM BUKSH MANDAL v. SHAJAD AHMAD CHAUDHURY** (1914)

19 C. W. N. 1311

ss. 108, 178—

See LIMITATION ACT (IX OF 1872).

I. L. R. 38 Mad. 793

ss. 134, 137—*Suit against principal and surety—Removal of principal's name as summons could not be served on him—Suit can proceed against surety alone if suit against principal be still in time—Civil Procedure Code (Act V of 1908), Order IX, Rule 5, Order XXIII, Rule 1.* A suit was brought in 1913 on a promissory note passed in 1912 by defendant No. 1 as principal and defendant No. 2 as surety. No summons could be served on defendant No. 1: his name was therefore struck out and the suit proceeded against defendant No. 2 alone. The lower Court dismissed the suit on the ground that as the principal was discharged by an act of the creditor (plaintiff) in having his (defendant No. 1's) name struck out, the surety also was thereby discharged. On plaintiff's application under extraordinary jurisdiction, *Held*, reversing the decree and remanding the suit, that the mere omission of the plaintiff to pursue his suit against one of the defendants with the result that that defendant's name was struck off and the suit dismissed against him under Order IX, Rule 5, of the Civil Procedure Code (Act V of 1908) did not discharge the surety, provided the suit was still in time against the principal. **NATHABHAI THICANLAL v. RANCHHODLAL RAMJI** (1914)

I. L. R. 39 Bom. 52

ss. 151, 152—

See RAILWAY . I. L. R. 39 Bom. 191

ss. 196 to 200—

See MADRAS IRRIGATION CESS ACT (VII OF 1865), s. 1 . I. L. R. 38 Mad. 997

s. 230 (2)—

See SALE OF GOODS.

I. L. R. 42 Cal. 1050

CONTRACT ACT (IX OF 1872)—*contd*

s. 235—

See LIMITATION ACT (XV OF 1877),
SCH. II, ARTS 36, 115 AND 120
I. L. R. 38 Mad. 275

ss. 239, illus. (a), 249, 251, 252—

See PARTNERSHIP

I. L. R. 39 Bom. 281

CONTRACT OF EMPLOYMENT.

See BROKER I. L. R. 42 Calc. 1050

CONTRACT OF MARRIAGE.

See MARRIAGE, CONTRACT OF

I. L. R. 39 Bom. 682

breach of—

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1887), SCH. II, ART 35 (a)
I. L. R. 38 Mad. 274

CONTRACT OF SALE.

See EVIDENCE ACT (I OF 1872) s. 92
I. L. R. 38 Mad. 514

CONTRACTS Q. I. F.

See CONFISCATION

I. L. R. 42 Calc. 334

CONTRIBUTION.

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 82 I. L. R. 37 All. 101

CONTRIBUTORIES.

See COMPANY I. L. R. 39 Bom. 331

CONVERSION.

outside British India—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), ss. 170 TO 188
I. L. R. 38 Mad. 779

CONVEYANCE.

See CIVIL PROCEDURE CODE (ACT V OF
1908), O II, R. 2

I. L. R. 38 Mad. 698

by executor—

See VENDOR AND PURCHASER

I. L. R. 42 Calc. 56

of family lands—

See HINDU LAW—ALIENATION

I. L. R. 38 Mad. 1187

CONVICTION.

See EVIDENCE I. L. R. 42 Calc. 784

CORPORATION-SOLE.

See MUTT, HEAD OF

I. L. R. 38 Mad. 350

CORROBORATION.

See CONFESSIONS OF CO-ACCUSED

[I. L. R. 42 Calc. 789]

COSTS.

See PAKI ADAT TRANSACTIONS

I. L. R. 39 Bom. 1

proceed on every ground common to all the plaintiff or defendants. It is quite sufficient if it proceeds on any ground common to the party to which the appellant belongs. Under s. 107 of the Code, the Appellate Court has the same power as the Court of first instance. *Shama Soonduree Debia v Jardine Skinner & Co.*, 12 W. R. 160, *Dildar Ali Khan v Bhawan Sahas Singh*, 1 L. R. 31 Calc. 578, and *Ram Kanai Saha v Ahmad Ali*, 1 L. R. 30 Calc. 429 referred to. *AMBIKA PRASAD SINGH v PERDIP SINGH* (1914)

I. L. R. 42 Calc. 451

2. —

— Taxation—Application by a person for being registered as a share holder in a Company—*Indian Companies Act (VI OF 1882) s. 254—High Court Rules, Rule 704—High Court Manual of Circular, Chapter VIII To*

LD v. VAGINDAS MAGANLAL (1915)

I. L. R. 39 Bom. 383

3. —

— Appeal—Security for costs. The fact that the appellant has no money of her own is not in itself a sufficient ground for demanding security for costs. When it appeared that the appeal was not merely vexatious

certified by

had rela

a sufficient

LHA NATH

19 C. W. N. 440

4. —

— Discretion as to Costs—Accounts sent for, against manager—Costs against manager for default or dishonest conduct in accounting—S. 22, Presidency Small Cause Courts Act (XV OF 1882). A person who takes up the

mits a false account and keeps back books of account or documents. *Hurranath v Krishna Kumar*, 1 L. R. 11 Calc. 147, 159, referred to. Where the manager sued the principal for arrears of salary in the Presidency Court of Small Causes and the principal sued the manager in the High Court for accounts and the two suits were heard

COSTS—concl'd.

together in the High Court and an amount less than Rs. 1,000 was found due from the manager to the principal, costs were awarded against the manager on High Court scale No. II having regard to the circumstances above stated. *SUKUMARI GHOSH v. GOPI MOHAN GOSWAMI* (1915)

19 C. W. N. 880

5. ————— *when part only of claim allowed.* The Subordinate Judge having decreed the plaintiffs' claim for less than half the amount should have allowed the plaintiffs' costs to the extent of their success. *KHAGARAM DAS v. RAM SANKAR DAS PRAMANIK* (1914)

19 C. W. N. 775

COURT.

————— *duty of—*

See INTEREST . I. L. R. 42 Calc. 690

————— *not closed, if the officer on tour—*

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192 . I. L. R. 38 Mad. 295

COURT FEE.

See AD VALOREM COURT-FEE.

See DECLARATION, ETC.

;; *I. L. R. 38 Mad. 922*

See SUCCESSION ACT (X OF 1865), s. 187.

I. L. R. 38 Mad. 988

————— *Plaint—Valuation of Suit—Court Fees Act (VII of 1870), s. 7, sub-s. (4), cl. (c).* In a suit for a declaration that a decree for over Rs. 22,000 was bad and might be set aside, the plaintiffs, who were interested only in three-annas share of the property which was valued at Rs. 9,000 were required to pay court-fee for the whole of the decretal amount:—*Held*, that the plaintiffs must value their suit according to the extent of their claim and the court-fee need therefore be paid only upon the amount. *Phul Kumari v. Ghanshyam Misra, I. L. R. 35 Calc. 202, and Harihar Prasad Singh v. Shyam Lal Singh, I. L. R. 40 Calc. 615, referred to. GANESH BHAGAT v. SARADA PRASAD MUKERJEE* (1914)

I. L. R. 42 Calc. 370

COURT FEES ACT (VII OF 1870).

————— *s. 7, sub-s. (4), cl. (c)—*

See COURT-FEE.

I. L. R. 42 Calc. 370

See DECLARATION, ETC.

I. L. R. 38 Mad. 922

————— *s. 7, cls. (iv) (c) and (v)—Suit for declaration of the invalidity of a decree as against the plaintiff or his properties and for possession of some of those properties sold under the decree—Relief for possession only consequential on grant of declaration—No liability to value the declaration as on the amount of the decree—Plaintiff's right to give a combined valuation for both reliefs.* In a suit for (i) a declaration that a certain decree was of no legal effect against the plaintiffs or the properties in their hands and (ii) possession of part of those

COURT FEES ACT (VII OF 1870)—concl'd.

————— *s. 7—concl'd.*

properties, which had been sold in execution of the decree, *Held*, (a) that the two reliefs were connected and were to be taken together, the relief for possession being consequential on the grant of declaration, (b) that the plaintiff was entitled to put in respect of both the reliefs a combined valuation for the purpose of court-fees, (iii) that the whole suit was not governed by s. 7, cl. 4 (c) of the Court Fees Act (VII of 1870), as there was a prayer for possession also which was to be valued as per s. 7, cl. 5, notwithstanding that the declaration was asked for, and (iv) that the prayer for declaration was not liable to be valued for purposes of court-fees as upon the amount of the decree sought to be set aside as invalid. *RAJAGOPALA v. VIJAYARAGHAVALU* (1914)

I. L. R. 38 Mad. 1184

————— *s. 7, cl. IV (f) and s. 11—*

Suit for accounts and administration—Valuation of the suit for purposes of court-fees. In a suit for accounts and administration of the estate by the Court, the claim was valued at Rs. 130 for purposes of court fees and at Rs. 30,00,000 for purposes of jurisdiction and pleader's fees. It was contended on behalf of the defendants that the suit had not been properly valued for purposes of court fees inasmuch as the suit was not an administration suit but was in effect a claim by the plaintiff for her share in the estate. This contention found favour with the lower Courts which held that the suit was not for administration and the stamp duty was payable on the value of plaintiff's share in the property which amounted to Rs. 67,968-12-0. On appeal to the High Court: *Held*, that having regard to the statements in the plaint, an administration suit was maintainable and that it could be treated as a suit for account. The plaintiff would, therefore, be at liberty to value it at Rs. 130 or any other sum under s. 7, cl. IV (f) of the Court Fees Act. In the event of a decree being passed for a larger amount than that covered by the fees already paid, the plaintiff would be precluded by the provisions of s. 11 of the said Act from executing such decree until fees liable on the whole amount of the decree had been paid. *KHATIJA v. SHEKH ADAM HUSENALLY* (1915)

I. L. R. 39 Bom. 545

————— *s. 7, cl. (xi) (cc)—*

See JURISDICTION.

I. L. R. 38 Mad. 795

COURT OF WARDS.

See U. P. COURT OF WARDS ACT (III OF 1899), ss. 16 AND 20.

I. L. R. 37 All. 585

COURT-SALE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 53 . I. L. R. 39 Bom. 507

CREDIT.

See CONTRACT, BREACH OF.

I. L. R. 38 Mad. 801

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 110—

1. *Security for good behaviour*—*Fresh proceedings after expiration of an order under section if can be based on materials antecedent to the expiration of the previous order.* When after the expiration of the period of a bond for good behaviour taken under s. 110, Criminal Procedure Code fresh proceedings are taken against the accused, such proceedings must be confined to facts and circumstances alleged against him after release from his last security. *RAM DEO PANDE v. THE EMPEROR* (1912)

19 C. W. N. 223

2. *Jurisdiction of Magistrate*—"Within the local limits," meaning of. The words "within the local limits of his jurisdiction" are not equivalent to "residing within the local limits." It is sufficient to give the Magistrate jurisdiction, if the evil habits of the accused were practised and evil reputation acquired within the local limits of his jurisdiction. *KING-EMPEROR v. DURGA HALWAI* (1915)

19 C. W. N. 1022

ss. 110, 526—*Security for good behaviour—Transfer—Jurisdiction—Powers of District Magistrate.* When proceedings under s. 110 of the Code of Criminal Procedure initiated before a Magistrate of the first class were transferred by the High Court to the District Magistrate with instructions to transfer them to some other Magistrate subordinate to him, competent to try them, it was held that the District Magistrate had no power to transfer such proceedings to a Magistrate of the second class. *King Emperor v. Munna*, I. L. R. 24 All. 151, distinguished. *EMPEROR v. GOVIND SAHAI* (1914)

I. L. R. 37 All. 20

ss. 188, 122—

See SURETY. I. L. R. 42 Calc. 706

s. 133—*Jury—Applicant consulted by Magistrate as to appointment of jury.* In proceedings instituted under s. 133 of the Code of Criminal Procedure at the instance of *H* against *F*, *F* applied for the appointment of a jury, which was granted. He nominated two jurors. The Magistrate called upon *H*, to nominate two jurors. *H* nominated two jurors, and the Magistrate appointed a foreman. The jury by a majority made an order against *F*. Held, that it is not illegal on the part of a Magistrate to address any inquiry to the applicant with a view to ascertaining the names of respectable and independent residents of the neighbourhood, who would be willing to serve on the jury: but the Magistrate should see that he does not appoint friends or partisans of the applicant. The criterion in such cases is whether the person at whose instance the proceedings were instituted was allowed to exercise rights not conferred upon him by law as if he were a party to the litigation. *Upendra Nath Bhattacharjee v. Khitish Chandra Bhattacharjee*, I. L. R. 23 Calc. 499, *Kailash Chandra Sen v. Ram Lall Mittra*, I. L. R. 26 Calc. 869, and *Mir Imam Abdul Aziz*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 133—*concl.*

v. Queen Empress, *Punj. Rec.*, 1897, Cr. J. No. 4, referred to. *FARZAND ALI v. HAKIM ALI* (1914)

I. L. R. 37 All. 26

ss. 133, 137—

See PUBLIC NUISANCE.

I. L. R. 42 Calc. 158, 702

s. 144—

1. *Renewed orders under—Jurisdiction of Magistrate—High Court's power of interference under Charter Act (24 & 25 Vict., c. 104) Art. 15.* Where a renewed order passed under s. 144, Criminal Procedure Code, did not state that there was again a temporary emergency and a continuing or existing insufficiency of the police force to protect the petitioners in their rights. Held, that the Magistrate gave himself a more extended jurisdiction than is covered by s. 144 and the order was revisable by the High Court under art. 15, Charter Act, 24 & 25 Vict., c. 104. Their Lordships declined to set aside the order as the two months during which the order would remain in force was almost expiring on the date of hearing. *GOVINDA CHETTI v. PERUMAL CHETTI* (1913)

I. L. R. 38 Mad. 489

2. *Scope of section—Hát, order restraining the holding of—Doing of a lawful act on one's own property if can be restrained under the section.* Where the only ground mentioned for the issue of an order under s. 144, Criminal Procedure Code, restraining the holding of a rival *hát* was that the Magistrate was satisfied from the report of the police that by opening a new *hát* at only half a mile from the old and long established *hát*, the petitioners were about to disturb the public tranquillity. Held, that an injunction cannot be issued not to do a lawful act upon a man's own property, and the order in the form in which it was issued was without jurisdiction. That the holding of a *hát* on a man's own property is not in itself a wrongful act, and therefore any ulterior consequence which may arise from it cannot give rise to any proceeding against the owner of the land for committing an act likely to cause a breach of the peace, unless those ulterior consequences are made the basis of the proceedings. The law as regards preservation of public peace is based upon an apprehension that either certain person or persons are likely to commit breach of the peace by their own acts or that they are likely to do wrongful acts which may occasion other people to commit breach of the peace. *RAKHAL DAS SINHA v. THE KING-EMPEROR* (1912)

19 C. W. N. 248

s. 145—

See LIMITATION ACT (IX OF 1908), s. 28, ART. 47. I. L. R. 38 Mad. 432

1. *Omission of Magistrate to give effect to presumption arising from*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—contd.

s. 145—contd.

recently published record-of rights, if a question of

is not a question going to the jurisdiction of the Magistrate, and the High Court cannot interfere on that ground. *CHINTAMONT JINA & JAGANNATH RAMANUJA DAS* (1914) 19 C. W. N. 123

in respect of which proceedings under s. 145, Criminal Procedure Code, were instituted consisted of several plots all held by tenants on a yearly rent of half the produce. The parties to the proceedings were the *lakherajdar* and the *putindar*, the dispute between whom was as to the right to collect rent. It appeared that as regards some of the plots there was a dispute as to what tenants were in possession. *Held*, that as regards the plots about which there was a dispute as to the tenants in possession, the Magistrate should not have made any order in the absence of tenants who might be very seriously prejudiced by an order in favour of one or other of the parties to the proceedings. *Held* (as to the argument that s. 145, Criminal Procedure Code, could not refer to a half share of the produce), that it was true that if it was a question of dividing a hitherto undivided share the section might not apply, but in the present case the section applied, as it was a question of rent and it so happened that the rent was half the share of the produce, but there was no question of shares as between the two parties to the proceeding. *HARI DAS SAMANTA v. ABDUL MOTILAL MULLICK* (1915) 19 C. W. N. 959

ss. 145, 356(1), (3)—

See DISPUTE CONCERNING LAND

I. L. R. 42 Calc. 381

ss. 145 and 522—Possession—Ouster—Jurisdiction of Magistrate in exercise of powers under s. 145 to dispossess one person and put another in possession. Under s. 145 of the Code of Criminal Procedure a Magistrate of the first class has no

Procedure which entitles a Magistrate to dispossess a person of property and replace him by another who is entitled, is s. 522 of the Code, and for the purpose of exercising the powers therein granted, it is necessary that there should have been a conviction for an offence. *TULSI RAM & ANBAR HUSAIN* (1915) I. L. R. 37 All. 654

s. 161—Statement recorded by the police, consideration of, by Court—Criminal trial—Duty of

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—contd.

s. 161—contd.

Judge to record independent finding as to truth or

dangerous to appeal from evidence judicially recorded under the sanction of cross examination to alleged statements made to the police which are not judicially recorded. It is the Judge's duty to make up his mind, while the witness is before him, whether he is a witness of truth or falsehood, and it is only when the Judge sees any reason to distrust his evidence that omission in a police record can become of any importance. *JUNG RAI & THE KING EMPEROR* (1912)

19 C. W. N. 217

s. 162—Statements made to police during investigation—Proof of the statement by oral deposition of the police officer to whom it is made—Indian Evidence Act (I of 1872), s. 157 During an investigation a witness stated to the police that she had seen a boy at the scene of murder soon after the offence was committed. When examined before the committing Magistrate, she denied the presence of the boy at the scene of the offence. At the trial before the Court of Sessions, she admitted the presence of the boy. The statement that the witness had made in the investigation was sought to be proved at the trial by the oral deposition of the police officer to whom it was made. The defence objected to this deposition on the ground that it offended against the provisions of s. 162 of the Criminal Procedure Code. The Sessions Judge overruled the objection and let in the evidence. The accused having appealed, *Held*, that the police officer could be allowed to depose to what the witness had stated to him in the investigation, for the purpose of corroborating what she had said at the trial. *EMPEROR v. HANUMARADDI* (1914) I. L. R. 39 Bom. 58

ss. 179 and 182—

See PENAL CODE (ACT XLV OF 1860), s. 405 I. L. R. 33 Mad. 639

ss. 179 to 189—Entrustment to natives Indian subject in India—Conversion outside British India—Loss in India—Jurisdiction of Indian Courts to charge and try without certificate under

misappropriation without a certificate under s. 183, Criminal Procedure Code. *SESSIONS JUDGE, TANJORE v. SUNDARA SWAMI* (1910), *Mad. H. N. 113*, *Imperial v. Tribhuan*, 13 Cr. L. J. 553, disallowed from. *ASSISTANT SESSIONS JUDGE, NORTH ARCOT v. RAMASWAMI ASARI* (1914) I. L. R. 35 Mad. 779

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— **s. 193—Transfer—Appeal—“Case”**—*Powers of Sessions Judge.* Held, that the word ‘cases’ as used in s. 193 (2) of the Code of Criminal Procedure does not include appeals. *In re the petition of Mansa Asmal, I. L. R. 9 Bom. 165,* and *Chattar Pal Singh v. Raja Ram, I. L. R. 7 All. 621,* followed. *Allah Dei Begam v. Kesri Mal, I. L. R. 28 All. 93,* referred to. *EMPEROR v. ABDUR RAZZAK (1915)* **I. L. R. 37 All. 286**

— **s. 195—**

See SANCTION FOR PROSECUTION.

I. L. R. 42 Calc. 667

— *Sanction for false complaint, appeal against—Police report based on a judgment of Court, sufficient legal basis for grant of sanction.* Though a Court should not accord a sanction to prosecute under s. 195, Criminal Procedure Code (Act V of 1898), for bringing a false complaint, merely on the strength of a police report, yet if the report is based upon a judgment of the Court in a counter-case brought against the complainant, in connection with the same matter wherein his defence which was exactly the same as his complaint was found to be false, such report is sufficient legal material for the Court to accord its sanction for false complaint. *Queen-Empress v. Sheik Beari, I. L. R. 10 Mad. 232,* referred to. S. 195, Criminal Procedure Code, does not prescribe any rule as to upon what materials a Court should accord its sanction nor does it say that a fresh or preliminary enquiry should be held before granting sanction. *Per SADASTVA AYYAR, J.* The complainant’s sworn statement, which was disbelieved by the Magistrate, was another legal material to form the basis for the grant of sanction against him. A sanction given by the lower Court ought not to be lightly revoked by a Court of Appeal. A third appeal to the High Court to revoke a sanction, though legally made in the form of a petition under s. 195, Criminal Procedure Code, ought not to be encouraged in practice. *Re NARAYANA NADAN (1914)*

I. L. R. 38 Mad. 1044— **s. 195, cl. (1) (c)—**

— *Sanction to prosecute—Mamlatdar’s Court—Enquiry into Record of Rights—Mamlatdar’s Court is Revenue Court—Land Revenue Code (Bombay Act V of 1879), Chapter XII.* A Mamlatdar holding an enquiry relating to Record of Rights, under Chapter XII of the Land Revenue Code (Bombay Act V of 1879), is a Revenue Court within the meaning of s. 195 (1) (c) of the Criminal Procedure Code (Act V of 1898). *EMPEROR v. NARAYAN GANPAYA (1914)*

I. L. R. 39 Bom. 310— **s. 195, cl. (6)—**

— *Sanction to prosecute—Power of Appellate Court.* An application under s. 195, cl. (6), of the Code of Criminal Procedure stands on a different footing from an application in revision and is analogous to an

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*— **s. 195—*concltd.***

appeal. The intention of the Legislature is that a Court of superior jurisdiction whose jurisdiction is invoked under the above section should consider the entire matter on the merits upon a complete review of all the facts. *RAM RAJA DAT v. SHEO DAYAL (1915)* **I. L. R. 37 All. 439**

— **ss. 195, 439—Civil Procedure Code (Act V of 1908), s. 115—24 & 25 Vict., c. 104, s. 15—Order by Civil Court refusing sanction—Jurisdiction of High Court to revise such order—Delay in applying for sanction.** The opposite party brought a suit for the recovery of money in the Court of the Munsif which was dismissed, the claim being found to be false and malicious. An application for sanction to prosecute the opposite party was however rejected by the Munsif as also by the District Judge in appeal on the ground of delay in making the application. Held (on an application by the Local Government against the order refusing sanction), that it was clear from the decision of the Full Bench in *Emperor v. Har Prasad, I. L. R. 40 Calc. 477, s. c. 17 C. W. N. 647*: that the orders of the Munsif and the Judge are not orders of a Criminal Court and cannot therefore be revised under s. 439, Criminal Procedure Code. The High Court however in the exercise of its powers under s. 115, Criminal Procedure Code, and s. 15 of the Charter Act granted sanction for the prosecution of the opposite party holding that the case being in substance a prosecution undertaken by Government, mere delay could not be taken as suggesting *mala fides*. *DEPUTY LEGAL REMEMBRANCER v. RAM UDAR SINGH (1914)* **19 C. W. N. 447**

— **ss. 195, 476—Indian Penal Code, ss. 471, 474—Using as genuine a forged document—Filing a forged document as coming from the custody of the person by whom it purported to be held, if constitutes ‘user’—Offence committed by such act, sanction if necessary for prosecution for—Possession of forged document, knowing it to be forged and intending to use it as genuine, prosecution for, if lies without sanction—Stay of criminal proceedings pending determination of civil suit.** Where in a case under s. 474, Indian Penal Code, the prosecution story was that the accused who was the plaintiff in a rent suit himself filed a *kabuliyat* and an *amalnama* which were forged and which purported to be filed by the complainant, the defendant in the rent suit: Held, that the act constituted user within the meaning of s. 471, Indian Penal Code, and the offence committed was one under that section and in respect of that offence sanction under s. 195 or an order under s. 476, Criminal Procedure Code, was necessary. That no sanction is necessary for a prosecution under s. 474, Indian Penal Code. That the decision of the issues in the rent suit being largely dependent on the question whether the documents in question were or were not genuine, it was expedient that the criminal proceedings should be deferred pend-

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— s. 195—*concl'd.*

ing the final disposal of the rent suit *ASRABUDDIN SARKAR v KALIDAYAL MULLIK* (1914)

19 C. W. N. 125

— ss. 195, 537—*Sanction to prosecute—Irregularity or illegality—Complaint filed after expiry of the time allowed by s. 195 (6)* *Held*, that the taking cognizance of a complaint in respect of which sanction had been obtained under s. 195 of the Code of Criminal Procedure after the expiry of the six months' period allowed by clause (6) of the section and when objection was taken at the earliest opportunity by the accused was more than an irregularity and was not covered by the provisions of s. 537 of the Code *EMPEROR v ZAHIR SINGH* (1915) . 1. L. R. 37 All. 283

— ss. 196, 235, 342, 360 (1), 417—

See CHARGES . 1. L. R. 42 Calc. 957

— ss. 198, 200, 503—

See COMPLAINT 1. L. R. 42 Calc. 19

— ss. 200, 254—*Procedure—Accused summoned without the complainant being examined—Irregularity—Proceedings not vitiated—Hurt, both simple and grievous—Cumulative sentences, legality of* The complainants made a complaint to the police to the effect that the accused beat them causing grievous hurt. The police did not send up the case and the complainants applied to the Magistrate, who sent for the police papers and summoned the accused without examining the complainants. On the date fixed the complainants were absent and the accused were discharged. Later in the day the complainants appeared and explained their delay, and the Magistrate again gave them time to produce evidence. He summoned the accused, found them guilty and sentenced them to imprisonment. *Held*, that the course the Magistrate adopted was irregular but did not vitiate the entire proceedings. *Held*, further, that where different persons are injured, grievous hurt being caused in one case and simple hurt in others, it is competent to the Court to impose separate and accumulated sentences. *LURENOR v BATESMAN* (1915) 1. L. R. 37 All. 628

question as to whether there were no sufficient grounds for proceeding. In the absence of a finding that the complaint was false or unsustainable

1. L. R. 38 Mad. 512

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— ss. 206 et seq.—*Practice—Power and duties of Magistrate inquiring into case triable by Court of Sessions* When a Magistrate has heard the evidence of the prosecution with entire disbelief, when he considers himself in a position to show that the prosecution witnesses are totally unworthy of credit, and a fortiori when, after examining certain witnesses named on behalf of the accused, he has come to the conclusion that evidence given by them is reliable and disproves that given by the prosecution he is well within his discretion in discharging the accused *FATTA v FATTA*, 1. L. R. 26 All. 564, *Sheo Bux v King-Emperor*, 9 C. W. N. 529, and *In re Bai Parva's*, 1. L. R. 35 Bom. 163, referred to *DHARAM SINGH v JOTI PRASAD* (1915) 1. L. R. 37 All. 355

— s. 203—

See COMMITMENT

1. L. R. 42 Calc. 603

— s. 233—*Omission to frame two separate charges for two offences, if vitiated trial—District offence, meaning of—S. 537, irregularity cured by—Scope of section* The petitioner was charged

two separate charges was an irregularity cured by s. 537, Criminal Procedure Code. The effect of the words "subject to the provisions hereinbefore contained" in s. 537, Criminal Procedure Code, cannot be that the section is to have no application if there has been any departure from any of the previous sections of the Code. Those words must be read as having reference only to ss. 529 to 536 and do not refer to the entire Code that precedes that section. That the case of *Subramania Iyer v. The King-Emperor*, 1. L. R. 25 Mad. 61 & 5 C. W. N. 866, is not an authority for the proposition that failure to observe the first part of s. 233 is fatal to the trial. *Beacheroff, J.*—The observation of the Judicial Committee that "their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity" is limited in its application to the case where charges are tried together which the law expressly says shall not be tried together in the same trial. The words "mode of trial" in that sentence cannot have reference to the formal defect of drawing up one charge instead of two. The drawing up of the charge is part of the trial but the words "mode of trial" have reference to the constitution of the trial and when their Lordships speak of "disobedience to an express provision as to a mode of trial" they do not refer to a formal defect in the proceedings in a trial which is properly constituted. *Sharfuddin, J.*—In *Subramania Iyer v. The King-Emperor*, 1. L. R. 25 Mad. 61 & 5 C. W. N. 866, the case before the Privy Council was

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concl'd.*

s. 233—*concl'd.*

not that any provision of s. 233 was contravened. The only question before their Lordships was whether the mode of trial in which one indictment contained 41 acts spread over a period longer than 12 months was or was not illegal by reason of the provisions of s. 234 of the Code. What their Lordships of the Privy Council have prohibited is that if the law expressly provides a particular mode of trial a disobedience of that vitiates the whole of the trial. It is doubtful if the framing of charges is a mode of trial, but joint trial of charges as to distinct offences would be a mode of trial and if an accused is tried jointly on several charges not coming under ss. 234, 235 236 and 239, that trial would be null and void. When two offences have been committed and they have no connection with each other, they are distinct offences within the meaning of s. 233, Criminal Procedure Code. Fletcher, J. S. 233, Criminal Procedure Code provides that for every distinct offence of which any person is accused, there shall be a separate charge. The causing of hurt to two different persons is obviously two distinct offences and there ought to have been two separate charges framed against the petitioner of the offences charged under s. 323, Indian Penal Code, and the failure to do so rendered the trial illegal. The whole of s. 537 is governed by the words "subject to the provisions hereinbefore contained." This includes, amongst other provisions the provisions contained in s. 233 and a neglect of the provisions contained in that section is not cured by s. 537. **RAM SUBHEG SINGH v. THE KING-EMPEROR (1915)** . . . 19 C. W. N. 972

s. 234—*Section, if applies to offences against different persons.* S. 234, Criminal Procedure Code, is not limited to cases where the offences have been committed against the same person. It applies where the complainants are different persons. *Per* Fletcher, J. The power given by s. 234 is however one that requires to be used with great care and caution when there are different complainants. **CHATTRADHARI MIAN v. THE KING-EMPEROR (1915)** . . . 19 C. W. N. 557

s. 239—

See MISJOINDER.

I. L. R. 42 Calc. 760

See MISJOINDER OF CHARGES.

I. L. R. 42 Calc. 1153

1. ——— *Joint trial of principal and abettor—Prejudice—Re-trial by another Judge.* Where there were three charges under ss. 408 and 408—109, Indian Penal Code, against two accused persons in respect of three sums said to have been defalcated on three different dates, and the Sessions Judge tried the two accused jointly in spite of objection taken by them: *Held*, that under s. 239, Criminal Procedure Code judicial discretion was given to the Court to try the principal offender and the abettor either jointly or

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concl'd.*

s. 239—*concl'd.*

separately and the manner in which this discretion should be exercised must depend on the facts of each case. The High Court, on a consideration of the circumstances of the case, held that the accused should not have been tried on the charge jointly, and set aside the convictions and sentences and directed that the re-trial, if any, should take place before another Sessions Judge. **DWARKA SING v. KING-EMPEROR (1913)** 19 C. W. N. 121

2. ——— *"Same transaction," determining factor as to.* In deciding whether offences are so connected as to form one and the same transaction the determining factor is not so much proximity in time as continuity and community of purpose and object. S. 239, Criminal Procedure Code is only an enabling section and does not in any way trammel the discretion of the Court. **LEGAL REMEMBRANCE, BENGAL v. MON MOHAN ROY (1914)** . 19 C. W. N. 672

s. 247—

See COMPLAINANT.

I. L. R. 42 Calc. 365.

——— *Death of Complainant, effect of, in a summons case—Substitution of relative of complainant.* In a case under s. 352, Indian Penal Code, after the death of the complainant his nephew applied for substitution of his name in place of the deceased. The Magistrate directed the case to be proceeded with, the ground assigned being that the accused had been guilty of the contempt of the process of the Court. *Held*, that it was not a sufficient ground and the Magistrate should have recorded an order of acquittal under s. 247, Criminal Procedure Code. **PURNA CHANDRA MOULIK v. DENGAR CHANDRA PAL (1913)** 19 C. W. N. 334

——— ss. 250, 423—*Compensation, order for—Appeal—Notice to the accused, order without, improper but not illegal—Complaints, false as well as frivolous or vexatious.* In appeals under s. 250 of the Code of Criminal Procedure, notice should ordinarily be given to the accused even though failure to give notice may not render the proceedings of the Court illegal. *Emperor v. Palani-appavelan*, I. L. R. 29 Mad. 187, approved. *Ambakkagari Nagi Reddy v. Basappa of Medimakulapalli*, I. L. R. 33 Mad. 89, followed. *Guruswami Naicken v. Tirumurthi Chetty*, 27 Mad. L.J. 629, explained. *Alagirisami Nayudu v. Balakrishnasami Mudaliar*, I. L. R. 26 Mad. 11, *Imperatrice v. Sadashiv*, I. L. R. 22 Bom. 519, *In the matter of the petition of Umrao Singh v. Fakir Chand*, I. L. R. 3 All. 749, and *In the matter of Teacotta Sheldar*, I. L. R. 8 Calc. 393, referred to. S. 250 not only refers to false complaints but to frivolous and vexatious complaints as well. *Emperor v. Bidesri Prasad*, I. L. R. 26 All. 512, and *Beni Madhab Karim v. Kumud Kumar Biswas*, I. L. R. 30 Calc. 123, referred to. *Ram Singh v. Mathura*, I. L. R. 31 All. 351, doubted. *Per* **SENGUPTA**.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 250—*contd.*

J. S. 250 does not declare what the powers of an Appellate Court are in disposing of appeals under clause (3) of the section. It is therefore unnecessary to invoke the aid of s. 423 for the purpose. *Per SESHAGIRI AYYAR, J.* The powers of the Appellate Court to grant redress have to be gathered from s. 423. S. 250 is not self contained as are sections relating to grant of sanction and to convictions for contempt (ss. 195 and 486). Chapter XXXI of the Criminal Procedure Code applies to appeals against orders under s. 250 of the Code. *VENKATRAMA V. KRISHNA (1915)*

I. L. R. 38 Mad. 1091

ss. 253 (2), 350 and 437—

See AUTREFOIS ACQUIT.

I. L. R. 38 Mad. 585

ss. 255, 342—Evidence Act (I of 1872), s. 30—Confession of co accused, admissible under—Separate trials not necessary where confession made during trial When before a Magistrate in a statement under s. 347, Criminal Procedure Code, certain accused confessed the crime and implicated their co accused and further under s. 255 (1), pleaded guilty to the charges; *Held*, that it was not necessary to try the co accused separately to enable the confessions to be used against them under s. 30, Indian Evidence Act. *Queen Empress v. Lakshmayee Pondaram, I. L. R. 22 Mad. 491*, disented from *Queen Empress v. Pirbu, I. L. R. 17 All. 524*, and *Queen Empress v. Pakuji, I. L. R. 19 Bom. 195*, distinguished. *Re BATH REDDI (1913)* **[I. L. R. 38 Mad. 302]**

evidence of that—Withdral of case under s. 301, Indian Penal Code, if necessarily follows from

Evidence Act (I of 1872), s. 105—Letters Patent, 1865, s. 26—Review of Criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate General—Statement by presiding Judge as to what took place at trial—Jurisdiction of High Court to consider case when errors alleged in certificate not established. The accused was tried and convicted in the Criminal Sessions of the High Court. He was placed on his trial on charges under ss. 302, 301 and 320, Indian Penal Code, to which he pleaded not guilty. He was defended by counsel who argued that the case against the accused was one of murder or nothing and the jury could not convict him of murder on the meagre and unsatisfactory testimony before the Court. Grave and sudden provocation was no part of the defence case. The Judge in charging the jury laid down the law under s. 302,

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 297—*contd.*

Indian Penal Code, but not that under s. 304 or the exceptions contained in s. 300. He observed that he did not see that there was any evidence of any of the exceptions provided for in s. 300. He did not explain to the jury the application of the exception of provocation to the facts of the case. The jury found the accused guilty under s. 302 by a majority of 8 to 1 and the Judge agree-

granted by the Advocate General under s. 20 of the Letters Patent *Held*, that a statement by the Trial Judge as to what took place at the trial is conclusive. That there was no illegality in not taking the verdict of the jury on the charge under s. 304, Indian Penal Code. That where there is no misdirection or other error as certified by the Advocate General under s. 20 of the Letters Patent his certificate is misconceived and the High Court has no power to interfere. It is not within its power to reopen the case and express any opinion on the merits. That in the present case in the absence of any direct evidence of grave and sudden provocation or of facts from which this exception could be legitimately inferred the Judge was correct in excluding enquiry into the exception. That under s. 105 of the Evidence Act the Court has to regard the absence of grave and sudden provocation as proved until the contrary is proved by the accused on whom the onus lies. *Per JENKINS, C. J.* That it is not impossible under

298, Criminal Penal Code, it comes within the duty of the Judge to determine whether any evidence has been given on which the jury can properly find the question for the party on whom the onus of proof lies. It is not enough to say that there was some evidence. There must be evidence on which the jury might reasonably and properly conclude the fact to be established. That the duty of the Judge in charging the jury is to lay down the law in reference to the case presented to the Court and the facts of the case and not to perplex the minds of the jury with considerations that are outside the legitimate scope of the enquiry. That the conduct of a case by counsel is not a negligible factor even in a criminal suit though it may not conclude the accused and in approaching the question whether the Judge rightly decided as a matter of law that there was no evidence of any of the exceptions it is relevant to consider how the accused's case was placed before the Court. *Per STRACHAN, J.* That the propriety and not the possibility of an inference is the test by which a Judge should decide whether or not he should suggest a case for the consideration of the jury on his own initiative. It is the duty of a

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—contd.
s. 297—concl'd.

Judge to make a case for the accused on which he thinks that a verdict of not guilty may be properly returned though the case has not been suggested by or on behalf of the accused. It is the duty of defending counsel to make the Judge aware of any case that he considers may be made on behalf of the accused though he has not made it himself. *Per* WOODROFFE, J. It cannot be laid down as a general proposition of universal applicability that a Court cannot and should not consider a case in favour of the accused which he has not raised. If such a case arises on the prosecution evidence, it should be put to the jury for their consideration whatever line might have been taken by the accused or his counsel. But on the question whether an inference does arise in favour of the accused the fact that a particular defence has or has not been taken, may affect the significance of the evidence given. *Per* MOOKERJEE, J. The expression "lay down the law" in s. 297, Criminal Procedure Code, does not signify "lay down the whole law on the subject irrespective of the facts of the particular case before the Court." The reasonable construction of s. 297, Criminal Procedure Code is that the Judge should lay down the law only in so far as it bears upon the evidence adduced in the particular case. The mere fact that counsel for the accused has failed to present to the Court a particular aspect of the case cannot justify an omission on the part of the Judge to draw the attention of the jury to what appears to be a possible answer to the charge against the accused even on the prosecution evidence: it would be the duty of the Judge to draw the attention of the jury to such possible view of the case on the evidence notwithstanding that it may have escaped the counsel for the accused. Mere non-direction is not necessarily misdirection: those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by the counsel for the prosecution and for the defence respectively. *Per* HOLMWOOD, J. No error of law is committed by a Judge who refrains from directing the jury as to exceptions which have neither been raised nor relied upon by the accused and have no basis in evidence on the record. Where there is no evidence bringing the case directly within any such exception, it would be misdirection to ask the jury to come to a finding of fact on a hypothetical state of circumstances which do not bring the case within the exception as a matter of fact. *KING-EMPEROR v. UPENDRA NATH DAS* (1914)

19 C. W. N. 653

ss. 298 (1) (c), 337—

See PARDON . I. L. R. 42 Calc. 856

s. 307 (2)—

See REFERENCE I. L. R. 42 Calc. 786

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—contd.
ss. 337, 339—

See PARDON . I. L. R. 42 Calc. 756

s. 339—Pardon—Forfeiture of pardon—Procedure—Witness giving evidence at a sessions trial on a conditional pardon disbelieved by Judge. A conditional pardon was given to G and he was tendered as a witness in a Sessions trial. The Judge before whom he was examined was of opinion that G had not spoken the truth, and, acquitting the accused, directed the prosecution of G. G did not plead his pardon before the committing Magistrate, but did plead it before the Sessions Judge, who set aside the commitment and discharged the accused. *Held*, that G was entitled to raise the plea before the Sessions Judge though he had not raised it before the committing Magistrate. *Held*, also, that the Sessions Judge in the former trial had no authority to direct the prosecution of G on any specific charge, but if he thought that G had wilfully concealed anything essential or given evidence on any point which was positively false, he was entitled to record an opinion to that effect and to invite the attention of the District Magistrate to his opinion or possibly to suggest the propriety of G's prosecution. *Emperor v. Kothia*, I. L. R. 30 Bom. 611, *Kullan v. Emperor*, I. L. R. 32 Mad. 173, *Alagirisami v. Emperor*, I. L. R. 33 Mad. 514, *Emperor v. Abani Bhasan*, I. L. R. 37 Calc. 845, referred to. *EMPEROR v. GANGUA* (1915) I. L. R. 37 All. 331

s. 342—Criminal Law Amendment Act (XIV of 1908), case under, Court if may examine accused in. It is within the competence of the Court in a case under Act XIV of 1908 to examine the accused in order to give him an opportunity of explaining the circumstances appearing on the evidence against him. *EMPEROR OF INDIA v. NAGENDRA NATH GUPTA* (1915) . 19 C. W. N. 923

s. 345—Compounding offences—Revision—Powers of High Court—Court not competent to allow composition in revision. *Held*, that the High Court has no power to allow a case to be compounded which is before it in the exercise of its revisional jurisdiction. *EMPEROR v. RAM CHANDRA* (1914) I. L. R. 37 All. 127

ss. 345, 439—Compromise—Assault in the course of which the person assaulted received fatal injury—High Court's revisional jurisdiction. Four persons assaulted one P with the result that P died. *Held*, that it was not competent to the widow of P to compound the case with P's assailants in respect of the injuries caused to P. *Held*, further, that when several persons were acquitted by the Sessions Judge and on being moved by the Government, the High Court issued warrants for their arrest, only one was arrested but the others were absconding, the High Court in the exercise of its revisional jurisdiction is competent to set aside the order of their acquittal. *EMPEROR v. RAHMAT* (1915) . I. L. R. 37 All. 419

s. 348—Indian Penal Code (Act XLV of 1860), Chaps. XII and XVII—Procedure of Ma-

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— s. 348—*contd.*

Magistrate who cannot adequately punish In this case the accused who had been previously convicted of an offence under s. 391, Indian Penal Code, was charged before the Sub Magistrate of Salem with an offence under s. 411, Indian Penal Code. The Sub Magistrate tried and convicted him of the offence and ordered his commitment to the Court of Sessions for the purpose of awarding him enhanced punishment. Held, that the conviction and commitment were illegal. The correct procedure to be followed in such a case is for the Magistrate either as a preliminary matter or before framing a charge to determine whether he has power to pass a sufficient sentence. If he thinks he has not such power he should frame a charge and commit the accused. *Re SELLANDI* (1913)

I. L. R. 38 Mad. 552

— ss. 360 (1), 476—

See PERJURY I. L. R. 42 Calc. 240

— s. 403—*Previous acquittal*—"Court of competent jurisdiction"—*Sanction* Where the law requires a previous sanction to be given before a charge can be entertained by a Court, that Court is not a Court of competent jurisdiction until the sanction has been obtained. *In re Samsudin*, 1 L. R. 22 Bom. 711, followed. The fact, therefore, that a person has been tried for and acquitted of offences under the Indian Penal Code in respect of certain transaction in connection with the registration of a document is no bar to his trial for an offence under a 82 of the Registration Act arising out of the same transactions. *EMPEROR v. JIWAN* (1914)

I. L. R. 37 All. 107

— s. 408 (b)—*Assistant Sessions Judge*—*One accused sentenced to imprisonment for more than four years—Others to a lesser period—Appeal* When an Assistant Sessions Judge sentences one of several accused to more than four years' rigorous imprisonment and others to lesser terms the appeals of all lie to the High Court even though the accused who is sentenced to more than four years does not appeal. *EMPEROR v. HAM DAIYAL* (1915)

I. L. R. 37 All. 471

— s. 423—

See APPEAL I. L. R. 42 Calc. 374

See TRADING WITH THE ENEMY
I. L. R. 42 Calc. 1024

— ss. 435, 439, 491—

See EXTRADITION WARRANT

I. L. R. 42 Calc. 793

— s. 438—*High Court will not interfere with an acquittal in revision where an appeal might have been preferred by Government* In a case in which the complainant being absent, the Magistrate acquitted the accused under s. 247, Criminal Procedure Code, it subsequently transpired that the absence of the complainant had been procured by the fraud of the accused who had had him

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

— s. 438—*contd.*

arrested and kept in custody on a false charge.

where an appeal lay by Government against such an order. *Re SINGU GOUDAN* (1914)

I. L. R. 38 Mad. 1023

— s. 439—

See ACQUITTAL I. L. R. 42 Calc. 612

— ss. 439, 562—*Revision—Powers of High Court* Inasmuch as action taken under s. 562 of the Code of Criminal Procedure takes the place of a sentence on an accused person, the High Court cannot in revision substitute for an order under that section a definite sentence of whipping or imprisonment. *EMPEROR v. GHASIT* (1914)

I. L. R. 37 All. 31

— s. 476—

1. — *Jurisdiction—Limitation* There is nothing in s. 476 of the Code of Criminal Procedure which requires a court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time there after. In the matter of the petition of *Nawal Singh*, 1 L. R. 34 All. 393, *Gurwar Prasad v. King Emperor* 6 All. L. J. 392, followed. *Siva Kanna v. Emperor*, 1 L. R. 32 Mad. 49, *Rainadulla v. Emperor*, 1 L. R. 31 Mad. 140, not followed. *In re Lalshim Das*, 1 L. R. 32 Bom. 184, *Emperor v. Rustamji Hurmujji Tarvala*, 4 Bom. L. R. 778, referred to. *EMPEROR v. TILAK PANDAY* (1915)

I. L. R. 37 All. 344

2. — *Penal Code (Act XLV of 1860), s. 152—Calling for a report from interested party as to truth of complaint, properly if—*

tain factory, whereupon the Magistrate called for a report from the Manager of the factory, and on receipt thereof required the petitioners to show cause against prosecution under s. 142, Indian Penal Code, and then after examining some witnesses on each side, but without examining the petitioners themselves, made an order under s. 476, Criminal Procedure Code, directing the respondent to file an offence under s. 142, Indian Penal Code. Held, that the order of the Magistrate in calling for a report from the Manager of the factory was open to great objection. That the accused being the servants of the factory, the Manager was an interested party and he ought not to have been asked to make a report in these judicial proceedings. Held (in setting aside the order for prosecution),

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—concl'd.

— s. 476—concl'd.

that further enquiry should be made into the truth of the petitioners' complaint, and they themselves should be examined if they chose to give evidence. *EMPEROR v. RAFFI RAUT* (1914)

19 C. W. N. 127

— ss. 497, 498—

See BAIL . I. L. R. 42 Calc. 25

— s. 522—*Appellate Court, if can set aside order while maintaining conviction—S. 423, cl. (d)—Incidental order.* An Appellate Court has power under s. 423, cl. (d), which authorises the Appellate Court in appeal to make an incidental order to set aside an order under s. 522 while affirming the conviction. *UJIR SHEIKH v. SYED ALI SHEIKH* (1915) . 19 C. W. N. 990

— s. 530—

See MAGISTRATES, BENCH OF.
I. L. R. 38 Mad. 304

— s. 537—*Penal Code (XLV of 1860) ss. 182 and 211—Acquittal upon ground of absence of sanction—Practice—Revision—Application by private prosecutor against order of acquittal.* Held, that a Court of criminal appeal was not justified in setting aside a conviction under s. 182 of the Indian Penal Code on the sole ground that the offence, if any, which the appellants had committed was one under s. 211 of the Code and that no sanction for a prosecution under that section had been obtained. In this case under special circumstances the High Court entertained an application in revision presented by a private prosecutor against an order of acquittal. *GUR BAKSH SINGH v. KASHI RAM* (1914)

I. L. R. 37 All. 110

CROSS-EXAMINATION.

— *Practice—Accused right of—Leading questions—Evidence Act (I of 1872), ss. 143, 154.* In India, as in England, the accused are entitled in cross-examination to elicit facts in support of their defence from the prosecution witnesses wholly unconnected with the examination-in-chief. In the course of cross-examination of this character the defence are entitled, in view of the generality of s. 143 of the Indian Evidence Act, to ask leading questions. Under s. 154, the Court has the discretion to permit the prosecution to test by way of cross-examination, the veracity of their own witnesses with regard to the (unconnected) matters elicited by the defence in cross-examination. *AMRITA LAL HAZRA v. EMPEROR* (1915) . I. L. R. 42 Calc. 957

CROSS OBJECTIONS.

— memorandum of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 22.

I. L. R. 38 Mad. 705

CROWN.

— right of, to prosecute—

See CONSPIRACY I. L. R. 42 Calc. 957

CUSTODY.

See GUARDIAN . I. L. R. 38 Mad. 807

CUSTODY OF MINOR.

See GUARDIANS AND WARDS ACT (VIII 1890), s. 25. I. L. R. 39 Bom. 438

CUSTOM.

See BABUANA GRANT.

I. L. R. 42 Calc. 582

See CUSTOM OF CASTE.

See HINDU LAW—CUSTOM.

I. L. R. 42 Calc. 582

See JAIGIR . I. L. R. 42 Calc. 305

See MAPPILLAS OF NORTH MALABAR.]
I. L. R. 38 Mad. 1052

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Calc. 455

See PRE-EMPTION.

I. L. R. 37 All. 129, 262, 472, 524

See SOHAG GRANT.

I. L. R. 42 Calc. 582

— of Marwari merchants—

See HUNDI SHAH JOG.

I. L. R. 39 Bom. 513

— validity of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.

I. L. R. 38 Mad. 850

— *Tenants if may cut and appropriate timber trees—Reasonableness or unreasonableness of custom if question of law or fact—Custom not unreasonable.* The reasonableness or unreasonableness of a custom is a question of law. *Bradburn v. Foley*, 3 C. P. 129, 135, followed. Where a customary right claimed by tenants to cut and appropriate trees upon the holding was upheld in the First Court, but the Judge on appeal declared the custom to be unreasonable in so far as it permitted the appropriation of timber trees: Held, that there was nothing unfair or dishonest or contrary to the public good in the custom and it was not unreasonable. *GURAI KAR v. RANI KUARMONI SINGHA MANDHATA* (1915) . 19 C. W. N. 1188

CUSTOM OF CASTE.

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 538

D**DAMAGE.**

See DAMAGES.

See ELECTRICITY ACT (IX OF 1910), ss. 14, 19 . I. L. R. 39 Bom. 124

DAMAGES.

See LIQUIDATED DAMAGES

action for—

See TRADE MARK

I. L. R. 42 Calc. 282.

ascertainment of—

See CONTRACT, BREACH OF

I. L. R. 38 Mad. 801

assessment of—

See PRACTICE I. L. R. 42 Calc. 819

for negligence of agent—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 6(e) I. L. R. 38 Mad. 138

interest on—

See TRUSTEE I. L. R. 38 Mad. 71

suit for—

See INJUNCTION I. L. R. 42 Calc. 550

suit for wrongful dismissal of a Municipal Officer—

See DISTRICT MUNICIPAL ACT (Bom III OF 1901), ss 2, 40 AND 107

I. L. R. 39 Bom. 800

DAMDUPAT, RULE OF.

Mortgage between Hindu, whether the rule of Damdupat applies to—
Transfer of Property Act (1882) s 55

Naidu, I L R 26 Mad 682, not followed in the matter of Hari Lal Mullick I L R 33 Calc 1269, Nanda Lal Roy v Dharendra Nath Chakravarti, I L R 40 Calc 710, Jeevanbhai Manohar Lalchondas, I L R 35 Bom 199, and Sundarabai v Jajanan, I L R 24 Bom 114, referred to. KUNJA LAL BANNERJEE v NARSANDA DEBI (1915)

I. L. R. 42 Calc. 826

DARBHANGA RAJ.

See HINDU LAW—CUSTOM

I. L. R. 42 Calc. 582

DASTURAT.

Nature of the right of—

Immoveable property, interest in—Circumstances justifying inference as to the existence and lawful origin of—Limitation—Limitation Act (XVI of 1877), Sch II, Art 131—Refusal, meaning of
The plaintiffs sued for a declaration of their right to recover certain sums of money as dasturati at specified annual rates and for recovery of the sums as a charge on properties in the possession of the defendants. It appeared that the plaintiffs' claim for dasturati was asserted and allowed in Courts of law since 1793, sometimes in spite of opposition, on other occasions without of position

DASTURAT—concl'd

Held, that the inference drawn by the lower Courts that the right alleged by the plaintiffs did exist and had a lawful origin was legitimate and the plaintiffs had an enforceable right to realise the sums claimed as dasturati from the defendants. That Art 131 of the Second Schedule of the Limitation Act of 1877 was applicable to the case. That "refusal" in Art 131 plainly implies a

establish that the plaintiffs did make a demand and that the defendants did refuse and as there was no evidence of this demand and refusal the suit was prima facie not barred under Art 131. That the right claimed was clearly in the nature of an interest in immovable property being a right vested in the proprietors of a specified estate to receive certain sums of money periodically from proprietors of other estates in their character as such. Under the Limitation Act of 1809, a suit to recover such an interest would have to be brought within twelve years from the date when the cause of action arose upon the denial or refusal

DAUGHTERS.

See HINDU LAW—INHERITANCE

I. L. R. 38 Mad. 1144

DEATH.

sentence of—

See PRIMA COUNCIL PRACTICE OF

I. L. R. 42 Calc. 739

DEBT.

See HINDU LAW—DEBT

I. L. R. 39 Bom. 113

attachment of—

See LIMITATION ACT (XVI OF 1908), SCH I, ARTS 29, 62 AND 120

I. L. R. 38 Mad. 972

part of—

See SUCCESSION CERTIFICATE

I. L. R. 42 Calc. 10

payable in kind—

See INTEREST ACT (XVIII OF 1839)

I. L. R. 38 Mad. 464

Charge—As against—
Transfer of Property Act (1882), s 55, sub-s (f) There is no authority for the contention that a charge such as the one mentioned in s 55, sub-s (f) of the Transfer of Property Act, is merely a personal right which cannot be transferred to an assignee. The debt could not be transferred and there is no reason why the security for the debt should not also be transferred

old.
Hari Ram v. Denaput Singh, I. L. R. 9
and Moti Lal v. Bhagwan Das, I. L. R.
 43, distinguished. *SHEONANDAN LAL v.*
ABDIN (1914) . I. L. R. 42 Calc. 849

R.
 See EMBARRASSMENT.
 I. L. R. 42 Calc. 652
 See PROVINCIAL INSOLVENCY ACT (III OF
 1907), s. 31 . I. L. R. 37 All. 383

FOR (LITERATE).
 See PRESIDENCY SMALL CAUSE COURTS
 ACT (XV OF 1882), s. 69.
 I. L. R. 38 Mad. 438

DECLARATION.
 See MUNICIPAL COUNCIL.
 I. L. R. 38 Mad. 6
 See STAMP ACT (II OF 1899), s. 57.
 I. L. R. 38 Mad. 349

DECLARATION AND INJUNCTION, SUIT
 FOR.
 Whether a suit for de-
 claratory decree with consequential relief—Court fee
 payable, whether *ad valorem*—Court Fees Act (VII
 of 1870), s. 7, cl. (4)(c). A suit for a declaration that
 a mortgage-decree is not binding on the plaintiff
 and for an injunction restraining the defendant
 from executing the same is a suit for a declaratory
 decree with consequential relief within the meaning
 of s. 7, cl. (4) (c) of the Court Fees Act and an *ad*
valorem fee is payable on the valuation fixed in
 the plaint. *ARUNACHALAM CHETTY v. RANGA-*
SAWMI PILLAI (1914) . I. L. R. 38 Mad. 922

DECLARATION OF LONDON.
 See CONFISCATION.
 I. L. R. 42 Calc. 334

DECLARATION OF PARIS.
 See CONFISCATION.
 I. L. R. 42 Calc. 334

DECLARATORY SUIT.
 See CIVIL PROCEDURE CODE (1908), s. 9.
 I. L. R. 37 All. 313
 See MADRAS LAND ENCROACHMENT ACT
 (MAD. III OF 1905) I. L. R. 38 Mad. 674
 See PENSIONS ACT (XXIII OF 1871), ss.
 4, 5, 6 . I. L. R. 37 All. 338

DECREE.
 See CIVIL PROCEDURE CODE (ACT V OF
 1908), s. 24 . I. L. R. 38 Mad. 25
 See CIVIL PROCEDURE CODE (ACT V OF
 1908), O. XXIII, r. 3.
 I. L. R. 38 Mad. 959
 See COURT FEES ACT (VII OF 1870).
 s. 7 . I. L. R. 38 Mad. 1184

DECREE FOR DIVORCE.

DECREE—contd.

See DECREE-HOLDER.

I. L. R. 38 Mad. 677

See DECREE NISI.

See DEFENDANT, DEATH OF.
 I. L. R. 38 Mad. 682

See FRAUD . I. L. R. 38 Mad. 203

See LIMITATION ACT (XV OF 1877), SCH.
 II, ART. 91 . I. L. R. 38 Mad. 321

See MISTAKE . I. L. R. 37 All. 323

See PROVINCIAL INSOLVENCY ACT (III OF
 1907), s. 34 . I. L. R. 37 All. 452

See RATEABLE DISTRIBUTION.
 I. L. R. 42 Calc. 1
 I. L. R. 38 Mad. 221

based on perjured evidence—

See FRAUD . I. L. R. 37 All. 537

construction of—

See EXECUTION OF DECREE.
 I. L. R. 37 All. 97

for joint possession—

See HINDU LAW—HUSBAND AND WIFE.
 I. L. R. 38 Mad. 1036

for sale—

See MORTGAGE . I. L. R. 37 All. 309

reversed in appeal—

See ASSIGNEE OF A MONEY-DECREE.
 I. L. R. 38 Mad. 36

transfer of—

See CIVIL PROCEDURE CODE (ACT V OF
 1908), ss. 47 AND 50.
 I. L. R. 38 Mad. 1076

upon compromise—

See CIVIL PROCEDURE CODE (ACT V OF
 1908), s. 48 . I. L. R. 39 Bom. 256

1. *Execution—Gar-*
nishee order—Revenue payable on estate ordered to be
paid into Court—Revenue in future can be ordered
to be paid—Civil Procedure Code (Act V of 1908),
 O. XXI, r. 52—*Darkhast kept alive as long*
as the decree remains unsatisfied—Practice and
 procedure. Under a consent decree the sum found
 duo was made payable in instalments; and the
 plaintiff was to be put in possession of the defen-
 dants' lands and also to receive the defendants' share
 of the revenues of three Inam villages. In
 the execution proceedings under the decree in
 1894, a consent order was taken whereby defen-
 dant No. 1 was constituted the plaintiff's tenant
 of the lands and the revenues of the villages were
 to be paid to the plaintiff through the Court.
 The Court then passed an order to the effect that
 the revenues of the villages should be paid by the
 village officers into Court. The payments so made
 were made over to the plaintiff till 1892, when
 the Court struck off the application for execution

DECREE—contd.

on the ground that the Court was *functus officio* for all purposes of execution as soon as it had put the plaintiff in possession of the lands in 1893 and issued one garnishee order of the same year.

in force till the plaintiff's death—*CURIAM*. Property attached yielding a revenue or producing interest or dividends is within the meaning and contemplation of all garnishee orders issued under O. XXI, r. 52 of the Civil Procedure Code (Act V of 1908); and that such interest or dividend becoming due, and therefore in the future, is expressly provided for in that rule, and it would follow upon the same principle that if an estate yielding a revenue were

I. L. R. 39 Bom. 80

2. — *Suit in a Baroda Court—Defendant's objection to jurisdiction and other pleas—Defendant's contentions overruled—Decree against defendant—Transfer of decree to a British Court for execution—Refusal to execute the decree on the ground of nullity—Voluntary submission to the jurisdiction of the Baroda Court—Execution of decree in a suit brought in a*

refused to execute it on the ground of its being a nullity as the defendant had not voluntarily submitted to the jurisdiction of the Baroda Court, he having protested against the right of that Court to entertain the suit at the earliest opportunity. *Held*, that, having regard to circumstances, the case was one of voluntary submission to the jurisdiction of the Baroda Court as the defendant had raised other pleas along with his objection to the jurisdiction of the Court to entertain the suit and that the decree passed by that Court could be executed by a British Court. *Perry & Co v. Appasami Pillai*, I. L. R. 2 Mad. 407, distinguished. *HARCHAND PANAJI v. GULABCHAND KANJI* (1914). I. L. R. 39 Bom. 34

3. — *Suit to set aside decree on ground of mistake, if any—Finality of litigation—Difference between consent decree and decree made on consent—Fraud. Per JENKINS, C. J.*—It is well settled that a contract of parties is none the less a contract because there is appended to it the command of a Judge. It still is a contract of the parties and as the contract is capable of being rectified for an appropriate mistake so, as a necessary consequence, is the decree which is merely a more formal expression given to that contract. There is no analogy between such a decree and a decree obtained upon contest

DECREE—contd.

and giving accurate expression to the Court's intention, and a fresh suit does not lie to set it aside on the ground that the Judge was mistaken. *Per HOLMWOOD, J.* (concurring). It does not matter whether the decree accurately expresses the intention of the judgment as that is a matter for amendment and not a separate suit. *Per JENKINS, C. J.* A decree can be set aside on the ground of fraud if of the required character. *KISODHAR BHAKTA v. BROJO MOHAN BHAKTA* (1915)

19 C. W. N. 1228

DECREE FOR DIVORCE.

See DIVORCE ACT (IV of 1869), s. 37.

I. L. R. 39 Bom. 182

DECREE-HOLDER.

See LIMITATION ACT (IX of 1908), s. 22.

I. L. R. 38 Mad. 837

See LIMITATION ACT (IX of 1908), SCH. I ARTS. 29, 62 AND 120

I. L. R. 38 Mad. 972

fraud of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50

I. L. R. 38 Mad. 1076

Petition for execution—
Sale of properties not mentioned in the decree—
Personal decree—Civil Procedure Code (Act V of 1908), O. XXXII, r. 6—Application, if necessary—

the face of putting them up to sale. A decree directing the defendant to pay a certain sum, and in default directing the hypothecated property to be sold is a personal decree. *Raja of Kalahasti v. Varadachariar*, 21 Mad. L. J. 1036, followed. When there is a personal decree, no application

under the above circumstances to order, if necessary, an amendment of the execution petition. *PERIASAMI KONE v. MUTHIA CHETTIAR* (1913)

I. L. R. 33 Mad. 677

DECREE-HOLDERS (RIVAL).

See RATEABLE DISTRIBUTION.

I. L. R. 33 Mad. 221

DECREE NISI.

Decree for possession on payment of a certain sum within six months, in

NISI—concltd.

forfeiture of the right to recover possession—Confirmation of decree—The term of six months to run from the date of the final decree. Plaintiff brought a suit to recover possession of property as purchaser from defendant—8 and to redeem the mortgage of defendant. The first Court having dismissed the suit, the plaintiff appealed, passed a decree directing the plaintiff to recover possession of the property from the date of its decree within six months from the date of the decree, and to pay within six months from the date of the decree he should forfeit his right to recover possession. All parties being dissatisfied with the decree, the plaintiff preferred a second appeal to the High Court and the two sets of defendants' separate sets of cross objections. The High Court confirmed the decree and the plaintiff's second appeal and the defendants' cross objections were dismissed. Within six months of the date of the High Court's decree the plaintiff deposited the amount payable by him and applied for execution. Defendant 7 contended that the plaintiff not having complied with the terms of the decree of the first appellate Court, his right to recover possession in execution was forfeited. The lower Courts upheld the defendant's contention and dismissed the plaintiff's second appeal by the plaintiff. Held, reversing the decree, that the time for executing a decree nisi for possession ran from the date of the lower Court's decree confirming the decree of the first appellate Court, for what was to be looked at and interpreted was the decree of the final appellate Court. *Raja Bhup Indar Bahadur Singh v. Bijai Bahadur Singh*, L. R. 27 I. A. 209, and *Nanchand v. Vithu*, I. L. R. 19 Bom. 258, followed. *SATWADI BALAJIRAV v. SAKHARLAL ATMARAMSHET* (1914) I. L. R. 39 Bom. 175

DECREE ON MORTGAGE.

See LIMITATION ACT (XV of 1877), SCH. II, ART. 179. I. L. R. 39 Bom. 20

DEED.

1. —Reference to conduct where language ambiguous, if permissible. Where the language of a written instrument is clear, no reference is permissible for its interpretation to the conduct of the parties. *ROHIM BAKSH MANDAL v. SHAJAD AHMAD* (1914) 19 C. W. N. 1311

2. —Destruction of right of suit—Negotiable Instruments Act (XXVI of 1881), s. 87. An alteration in a document which has the effect of enabling the payee to sue on the document in a Court where he could not have sued on it in its original form is a material alteration and as such destroys the right of action on the document. Altering a negotiable instrument by causing the words "or to disappear and making it non-negotiable" under ordinary law and

DEED—concltd.

also under s. 87 of the Negotiable Instruments Act (XXVI of 1881). The facts that the payee eventually filed the suit in another Court different from the one intended at the time of the alteration and that it was not necessary for him to rely on the altered state of document to enable him to succeed therein do not make the alteration any the less material. *Gour Chandra Das v. Prasanna Kumar Chandra*, I. L. R. 33 Cal. 812, followed. *Deeroix, Verley et Cie. v. Meyer & Co.*, 25 Q. B. D. 313, distinguished. *LAKEHAMMAL v. NARASIM HARAGHAVA AYYANGAR* (1913) I. L. R. 38 Mad. 746

DEED, CONSTRUCTION OF.

See CONSTRUCTION OF DEED.

I. L. R. 39 Bom. 119

"Easements, advantages, appurtenances, held and enjoyed as part of the house," meaning of. Words in a sale-deed of a house, such as the following:—"All my right, title and interest in and to the said house and ground with all the buildings, fixtures, rights, easements, advantages and appurtenances, whatsoever to the said house and ground appertaining or with the same held and enjoyed or reputed as part thereof or appurtenant thereto," are wide enough to convey not only actually existing easements but also (a) a way formerly enjoyed as an easement, but as to which the right had been suspended by unity of possession of the two tenements, and (b) a way, which during the unity of possession, had never existed as an easement but was in fact used for the convenience of one of the tenements afterwards severed. *Chunder Coomer Mookerji v. Koylash Chunder Sett*, I. L. R. 7 Cal. 665, followed. If on a disposition of property belonging to the same owner, tenements are severed and conveyed to different people either simultaneously or at different times but as part of one transaction, and necessary for the apparent and continuous and necessary for the enjoyment of the several tenements as they were enjoyed at the time of severance, will pass to the grantees thereof. In either case the conveyances are regarded in equity as one transaction, and each grantee who takes his tenement with the knowledge that the other tenements are being conveyed at the same time or will be conveyed as part of the same transaction, is deemed, in the absence of express stipulation, to take the land burdened or benefited, as the case may be, by the qualities which the previous owner had a right to attach to the different portions of his property before severance. *VENKIAH v. KRISHNAMOORTHY* (1913) I. L. R. 38 Mad. 141

DEED OF SALE.

construction of—
See VENDOR AND PURCHASER.

I. L. R. 42 Cal. 56

DEFAULT.

dismissal for—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10. I. L. R. 38 Mad. 887

in payment of instalments—

See LIMITATION I. L. R. 38 Mad. 374

DEFENDANT, DEATH OF.

Legal Representative not brought on record—Decree subsequent to such death, validity of—Objection to such decree in execution. A decree passed after the death of the defendant and before his legal representative was brought on the record is a nullity *Janardhan v. Ramachandra*, I. L. R. 26 Bom. 317, *Radha Prasad Singh v. Lal Sahab Rai*, I. L. R. 13 All. 53, and *Imdad Ali v. Jagan Lal*, I. L. R. 17 All. 478, for

I. L. R. 38 Mad. 682

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879).

ss. 3 (w), 10 and 53—

Suit falling under s. 3 (w)—Decision not appealable—Reason by District Judge. The decision in a suit falling

(1914). I. L. R. 39 Bom. 165

ss. 12, 13—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11, EXPL. IV; O II, R. 2.

I. L. R. 39 Bom. 133

s. 13—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 2, 97.

I. L. R. 39 Bom. 422

1. *Mortgage by Vastandar—Suit for account and redemption—Adverse possession by mortgagee—Hereditary Offices Act (Bom. Act III of 1874), s. 5—Mesne profits from the date of suit.* Ono Madhavrao, grandfather of the plaintiff, by a deed dated the 15th July 1897 mortgaged with possession certain Vatan Inam lands to Babaji Anant, an ancestor of the defendant. Madhavrao died, 1873, and in 1903 plaintiff sued to redeem the mortgage under the provisions of

they had been in possession adversely since that date. The Court of first instance disallowed the contention on the ground that the mortgagee

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879)—contd.

s. 13—contd.

claimed to hold the property as such and not as owner, and after taking accounts passed a decree in favour of the plaintiff awarding mesne profits from the date of suit till possession at Rupees four hundred a year. This decree was confirmed by the lower appellate Court. On appeal to the High Court: Held, that the mortgagee remained

indication on the part of the person in possession that he would from a certain date claim as absolute owner, and not as mortgagee, he could only acquire by adverse possession the limited interest to which he was entitled at the mortgagor's death, namely, that of a mortgagee. *Held*, further, that mesne profits from the date of suit could not be awarded as the enforcement of the provisions of s. 13 of the Dekkhan Agriculturists' Relief Act, 1879, placed the mortgagor in a much more favourable position than he would be in, if he relied upon the terms of the contract, and no presumption could arise that the mortgagee was, apart from the provisions of the Act, not entitled to retain possession after the date of the institution of the suit. *Janoji v. Janoji*, I. L. R. 7 Bom. 155, applied *Ramchandra Venkaji Nark v. Kallu Devi Desurabde* (1915)

I. L. R. 39 Bom. 587

ss. 13, 15D and 16—

Monetary dealings, mortgages and promissory notes—Suit for general account and redemption—One general account of mortgage and promissory note transactions—Mortgages found to be satisfied—Surplus profits under action of the s. 15 D and 16 of the Act—Mortgage account entirely separate from the promissory note account—Mortgagee not accountable for surplus profits under mortgage transactions. In a suit

with his claim for an account of moneys lent upon promissory notes. In taking an account the Court made up one general account of the mortgage transactions and the promissory note transactions

defendant on the promissory notes. *Held*, that the account could not be accepted. The Dekkhan Agriculturists' Relief Act (XVII of 1879) has made provision for two different classes of suits for account by agriculturists. s. 15D of the Act relates

DECREE NISI—concl'd.

default, forfeiture of the right to recover possession—Appeal—Confirmation of decree—The term of six months to run from the date of the final decree. The plaintiff brought a suit to recover possession of property as purchaser from defendants 1—6 and to redeem the mortgage of defendant 7. The first Court having dismissed the suit, the appellate Court, on plaintiff's appeal, passed a decree directing the plaintiff to recover possession on payment to defendants 1—6 of a certain sum within six months from the date of its decree and then to redeem defendant 7, and on plaintiff's failure to pay within six months from the date of the decree he should forfeit his right to recover possession. All parties being dissatisfied with the decree, the plaintiff preferred a second appeal to the High Court and the two sets of defendants filed separate sets of cross objections. The High Court confirmed the decree and the plaintiff's second appeal and the defendants' cross objections were dismissed. Within six months of the date of the High Court's decree the plaintiff deposited in Court the amount payable by him and applied for execution. Defendant 7 contended that the plaintiff not having complied with the terms of the decree of the first appellate Court, his right to recover possession in execution was forfeited. The lower Courts upheld the defendant's contention and dismissed the *darkhast*. On second appeal by the plaintiff, *Held*, reversing the decree, that the time for executing a decree *nisi* for possession ran from the date of the High Court's decree confirming the decree of the lower Court, for what was to be looked at and interpreted was the decree of the final appellate Court. *Raja Bhup Indar Bahadur Singh v. Bijai Bahadur Singh, L. R. 27 I. A. 209, and Nanchand v. Vitlu, I. L. R. 19 Bom. 258, followed. SATWAJI BALAJIRAV v. SAKHARLAL ATMARAMSHET (1914)*

I. L. R. 39 Bom. 175**DECREE ON MORTGAGE.**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179.

I. L. R. 39 Bom. 20**DEED.**

1. ————— *Interpretation of deed—Reference to conduct where language unambiguous, if permissible.* Where the language of a written instrument is clear, no reference is permissible for its interpretation to the conduct of the parties. *ROHIM BAKSH MANDAL v. SHAJAD AHMAD (1914)* . . . **19 C. W. N. 1311**

2. ————— *Material alteration of—Destruction of right of suit—Negotiable Instruments Act (XXVI of 1881), s. 87.* An alteration in a document which has the effect of enabling the payee to sue on the document in a Court where he could not have sued on it in its original form is a material alteration and as such destroys the right of action on the document. Altering a negotiable instrument by causing the words "or order" to disappear and making it non-negotiable is a material alteration, under ordinary law and

DEED—concl'd.

also under s. 87 of the Negotiable Instruments Act (XXVI of 1881). The facts that the payee eventually filed the suit in another Court different from the one intended at the time of the alteration and that it was not necessary for him to rely on the altered state of document to enable him to succeed therein do not make the alteration any the less material. *Gour Chandra Das v. Prasanna Kumar Chandra, I. L. R. 33 Calc. 812, followed. Decroix, Verley et Cie. v. Meyer & Co., 25 Q. B. D. 343, distinguished. LAKSHMAMMAL v. NARASIMHARAGHAVA AIYANGAR (1913)*

I. L. R. 38 Mad. 746**DEED, CONSTRUCTION OF.***See CONSTRUCTION OF DEED.***I. L. R. 39 Bom. 119**

— "Easements, advantages, appurtenances, held and enjoyed as part of the house," meaning of. Words in a sale-deed of a house, such as the following:—"All my right, title and interest in and to the said house and ground with all the buildings, fixtures, rights, easements, advantages and appurtenances, whatsoever to the said house and ground appertaining or with the same held and enjoyed or reputed as part thereof or appurtenant thereto," are wide enough to convey not only actually existing easements but also (a) a way formerly enjoyed as an easement, but as to which the right had been suspended by unity of possession of the two tenements, and (b) a way, which during the unity of possession, had never existed as an easement but was in fact used for the convenience of one of the tenements afterwards severed. *Chunder Coomer Mookerji v. Koylash Chunder Sett, I. L. R. 7 Calc. 665, followed.* If on a disposition of property belonging to the same owner, tenements are severed and conveyed to different people either simultaneously or at different times but as part of one transaction, *quasi easements*, apparent and continuous and necessary for the enjoyment of the several tenements as they were enjoyed at the time of severance, will pass to the grantees thereof. In either case the conveyances are regarded in equity as one transaction, and each grantee who takes his tenement with the knowledge that the other tenements are being conveyed at the same time or will be conveyed as part of the same transaction, is deemed, in the absence of express stipulation, to take the land burdened or benefited, as the case may be, by the qualities which the previous owner had a right to attach to the different portions of his property before severance. *VENKIAH v. KRISHNAMOORTHY (1913)* . . . **I. L. R. 38 Mad. 141**

DEED OF SALE.

— construction of—

*See VENDOR AND PURCHASER.***I. L. R. 42 Calc. 56**

DEFAULT.

dismissal for—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 10 I L R. 38 Mad. 867

in payment of instalments—

See LIMITATION I L R. 38 Mad. 374

DEFENDANT, DEATH OF.

Legal Representative not brought on record—Decree subsequent to such death, validity of—Objection to such decree in execution. A decree passed after the death of the defendant and before his legal representative was brought on the record is a nullity Janardhan v Ramachandra, I L R 26 Bom 317, Radha Prasad Singh v Lal Sahab Rai, I L R 13 All 53, and Imdad Ali v Jagan Lal, I L R 17 All 478, followed. Goda Cooporamier v Sundranimal I L R 33 Mad 167, distinguished. Objection to that effect can be taken in the execution proceedings SUBRAMANIAM v VAITHINATHA (1913).

I L R. 38 Mad. 682

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879).

ss 3 (w), 10 and 53—

Suit falling under s 3 (w)—Decision not appealable—Revision by District Judge. The decision in a suit falling under s 3 (w) of the Dekkhan Agriculturists Relief Act (XVII of 1879) is not appealable according to the provisions of s 10 of the Act. Under s 63 of the Act, the District Judge alone and not the Subordinate Judge of the First Class is authorized, in such a case, to pass an order in revision SITARAM MORAPPA v VISHVANATH SHRI HANADORA (1914).

I L R. 39 Bom 165

ss. 12, 13—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11, EXPL. IV, O II, R. 2

I L R. 39 Bom. 133

s 13—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 2, 97

I L R. 39 Bom. 422

I. _____ Mortgage by Va

aged with possession certain Vatan Inam lands to Babaji Inant, an ancestor of the defendants. Madharrao died, 1873, and in 1909 plaintiff sued to redeem the mortgage under the provisions of the Dekkhan Agriculturists Relief Act, 1879. The defendants contended that by reason of the

contention on the ground that the mortgage

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879)—contd

s. 13—contd

claimed to hold the property as such and not as owner, and after taking accounts passed a decree in favour of the plaintiff awarding mesne profits from the date of suit till possession at Rupees four hundred a year. This decree was confirmed by the lower appellate Court. On appeal to the High Court. Held that the mortgage remained a mortgage for the purpose of the redemption suit,

1 acquire by adverse possession the limited interest to which he was entitled at the mortgagor's death, namely, that of a mortgagee. Held, further, that mesne profits from the date of suit could not be awarded as the enforcement of the provisions of s. 13 of the Dekkhan Agriculturists Relief Act, 1879, placed the mortgagor in a much more favourable position than he would be in, if he relied upon the terms of the contract, and no presumption could arise that the mortgagee was apart from the provisions of the Act, not entitled to retain possession after the date of the institution of the suit Jonoji v Jonoji, I L R. 7 Bom 185, applied. RAMCHANDRA VESKARI NAIK v KALLO DEVI DESURADE (1915).

I L R. 39 Bom. 557

ss. 13, 15D and 16—

Mortgagee's duty, s. 13. Mortgages and promissory notes—Suit for general account and redemption—One general account of mortgage and promissory note transactions—Mortgages found to be satisfied—Surplus profits under mortgage transactions applied in reduction of the claim on promissory notes—Provision of the Dek-

plus profits under mortgage transactions. In a suit for general account under the Dekkhan Agriculturists Relief Act (XVII of 1879) and for redemption of mortgaged property, the plaintiff accounted his claim for account of the mortgage transactions with his claim for an account of profits lost from promissory notes. In taking an account the Court made up one general account of the mortgage transactions and the promissory note transactions and having found that the mortgages were satisfied, applied the profits subsequently to the satisfaction of the mortgage claims in an account in reduction of the account due to the defendant on the promissory notes. Held, that the account could not be accepted. The Dekkhan Agriculturists Relief Act (XVII of 1879) provides for two distinct modes of account by agreement. s. 13D of the Act requires

DEKKHAN AGRICULTURISTS' RELIEF ACT
(BOM. XVII OF 1879)—*concl'd.*s. 13—*concl'd.*

purely and exclusively to mortgage transactions. Under that section the plaintiff-agriculturist may have either a declaration of the amount due or he may combine a declaration of the amount due with a decree for redemption. S. 16 of the Act entitles the plaintiff to sue for a general account of money dealings between him and the lender and for a bare declaration of the amount due without any relief being claimed. Thus the two sections where accounts are contemplated stand on a different footing. Under the Act the mortgage account must be treated as entirely separate from the promissory note account so that the lender mortgagee would not be accountable for surplus profits received by him after the date when the mortgage claims were satisfied. *Janoji v. Janoji*, I. L. R. 7 Bom. 185 and *Ramchandra Baba Sathe v. Janardan Apaji*, I. L. R. 14 Bom. 19, referred to. *LAXMANDAS HARAKCHAND v. BABAN* (1914)

I. L. R. 39 Bom. 73

DELAY.

See PROBATE . I. L. R. 42 Calc. 480

DELHI LAW ACT (XIII OF 1912).

See FORFEITURE.

I. L. R. 42 Calc. 730

DEMANDS.

See MAHOMEDAN LAW—PRE-EMPTION.

I. L. R. 37 All. 522

DEPOSIT.

See CONTRACT ACT (IX OF 1878), ss. 39, 55, 64, 65, 73, 74 AND 75.

I. L. R. 38 Mad. 178

_____ of earnest money, forfeiture of—

See CONTRACT, BREACH OF.

I. L. R. 38 Mad. 801

DEPOSITION.

See PERJURY—WITNESS.

I. L. R. 42 Calc. 240

_____ reading over of—

See CHARGE . I. L. R. 42 Calc. 957

DÉPUTY COMMISSIONER.

See PATNI LEASE.

I. L. R. 42 Calc. 1029

DESHGAT VATAN LANDS.

See GRANT . I. L. R. 39 Bom. 68

DESTINATION.

See TRADING WITH THE ENEMY.

I. L. R. 42 Calc. 1094

DETECTIVE.

_____ privilege of—

See CHARGE . I. L. R. 42 Calc. 957

DIRECTOR.

_____ personal interest of—

See COMPANY . I. L. R. 38 Mad. 991

DISBELIEF.

See EVIDENCE . I. L. R. 42 Calc. 784

DISCOVERY.

See REVIEW . I. L. R. 42 Calc. 830

DISCRETION OF COURT.

See APPELLATE COURT.

I. L. R. 39 Bom. 386

See COMPANY . I. L. R. 39 Bom. 16

See LIMITATION ACT (IX OF 1908), s. 5.
I. L. R. 37 All. 267**DISCRETIONARY RELIEF.**

See FRAUD . I. L. R. 38 Mad. 203

DISMISSAL.

See MUNICIPAL OFFICER.

I. L. R. 39 Bom. 600

_____ for default—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10 . I. L. R. 38 Mad. 867

_____ of an editor of a newspaper—

See COMPANY . I. L. R. 38 Mad. 991

DISOBEDIENCE.See PENAL CODE (ACT XLV OF 1860)
ss. 188 AND 269.

I. L. R. 38 Mad. 602

DISPOSSESSION.See LIMITATION ACT (IX OF 1908), SCH.
I, ARTS. 62 AND 97.

I. L. R. 38 Mad. 887

DISPUTE CONCERNING LAND.

Evidence not recorded according to law, but memorandum taken down and signed by the Magistrate personally—Legality of final order—Criminal Procedure Code (Act V of 1898), ss. 145, 356 (1) and (3). The provisions of sub-s. (1) of s. 356 are mandatory. Sub-s. (3) applies only where evidence has been recorded in accordance with sub-s. (1) but not personally by the Magistrate. Where the Magistrate did not take down the evidence himself nor was it taken down in his presence and hearing and under his personal direction and superintendence nor signed by him, but he made a memorandum thereof and signed the same:—Held, that the provisions of s. 356 had not been complied with, and that the order declaring the opposite party to be in possession was bad in law. SADANANDA MANDAL v. KRISHNA MANDAL (1914) I. L. R. 42 Calc. 381

DISSOLUTION OF PARTNERSHIP.

See APPEAL . I. L. R. 42 Calc. 914

See MINOR . I. L. R. 42 Calc. 225

DISTRAINT.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 53 (2).

I. L. R. 38 Mad. 1140

DISTRAINT—concl'd.

See MADRAS ESTATES LAND ACT (I OF 1908), s 192 I. L. R. 39 Mad. 635

DISTRICT DEPUTY COLLECTOR.

See MAMLATDARS' COURTS ACT, BOMBAY (BOM II OF 1906), s 23

I. L. R. 39 Bom. 552

DISTRICT JUDGE.

See RELIGIOUS ENDOWMENT ACT (XX OF 1863), s 10 I. L. R. 38 Mad. 594

transfer by—

See TRANSFER. I. L. R. 42 Calc. 942

DISTRICT MUNICIPAL ACT (BOM. III OF 1901).

ss. 2, 46 and 167—

Dismissal of a Municipal Officer—Suit for damages for wrongful dismissal When a District Municipality exercising the power given to it by the District Municipal Act (Bom Act III of 1901) or the statutory rules made under the Act, dismisses an officer of

GIRI v. VASUDEO BALAKISHNA (1915)

I. L. R. 39 Bom. 600

DIVESTING OF PROPERTY

by adoption—

See HINDU LAW—ADOPTION.

I. L. R. 38 Mad. 1105

DIVORCE.

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 538

— Evidence Act (I of 1872), ss 60, 112, 113 and 120—Non access, competency of parties to testify to—Legitimacy of child—Expert opinion on legitimacy, relevancy of When in a suit for divorce the petitioner (husband) did not make any person a co respondent but simply averred that his wife was generally leading an immoral life, a judge would be wrong in adding a person as co respondent *suo motu* without calling on the petitioner to amend the petition by making the necessary allegations against him In the absence of the adoption of such a course the proper order to make is to strike out the co respondent's name from the proceedings. Whatever might be the English common law on the subject, under ss 113 and 120 of the Indian Evidence Act both the parties to proceedings for divorce are competent to give evidence as to non access and illegitimacy of the child *Held*, on the evidence in the case that a child born 11 months after the cessation of marital intercourse was illegitimate and that the petitioner was entitled to a divorce *Isaacs v. Ingles*, I. L. R. 18 Bom. 463, referred to. Under s. 60 of the Evidence Act a Court can consider and act upon the opinions of experts contained in treatises as regards the question whether a

DIVORCE—concl'd.

particular child could or could not have been begotten just before the period of non access. *JOHN HOWE v. CHARLOTTE HOWE* (1913)

I. L. R. 39 Mad. 466.

DIVORCE ACT (IV OF 1869).

ss. 4, 6, 7, 8, and 15—

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), s 16 I. L. R. 39 Bom. 136

s. 37—Decree for divorce—Permanent maintenance—Award of a lump sum—Payment. In a suit for divorce brought by the wife, the District Judge, *has*, under s 37 of the Indian Divorce Act (IV of 1869), power to make the order for payment of a lump sum for the permanent maintenance of the wife *Per HAYWARD J.*

limited for the period of her life *TAYLOR (Miss) v. CHARLES BLEACH* (1914)

I. L. R. 39 Bom. 182

s. 57—Marriage solemnized before the expiry of six months as required by, validity of S 57 of the Divorce Act (IV of 1869) expressly prohibits remarriage within six months of the making of the decree absolute, the Indian Law does not completely dissolve the tie of marriage until the lapse of a specified time after a decree of dissolution and the marriage is still in force within the meaning of s. 19 (f), so as to give the Court jurisdiction under s. 19 to pronounce a decree of nullity regarding such prohibited marriage. *Jackson v. Jackson*, I. L. R. 34 All 203, followed. *Chester v. Mure*, 32 L. J. 146, and *Walter v. Walter*, L. R. 15 P. D. 152, referred to. *BATTIE v. BROWN* (1913)

I. L. R. 38 Mad. 452

DOCTRINE OF PROTECTION.

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 745

DOCUMENT.

See HINDU LAW—ADOPTION.

I. L. R. 39 Bom. 441

affidavit to be relevant and proper If he fails to do so neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents *BILAS KUNWAR v. DESRAJ RANJIT SINGH* (1915)

19 C. W. N. 1207

2. Release, document written but not signed by executant if operates as—Name written at the commencement of document,

DOCUMENT—concl'd.

if sufficient. The place and manner of signature of a document is immaterial provided that the signature is inserted in such a manner as to authenticate the document, and where the instrument is in the handwriting of the party to be charged, it is sufficient if his name is inserted at the commencement. Where this was the case: *Held*, that the document was operative as a release though not signed by the executant. *GANGARAM AGARWALA v. LACHIRAM KISHEN DYAL* (1914)

19 C. W. N. 611

DOWER.

See MAHOMEDAN LAW—GIFT.

I. L. R. 42 Calc. 361

DOWER-DEBT.

See MAHOMEDAN LAW—PRE-EMPTION.

I. L. R. 37 All. 522

DRAINS.

right of municipality to—

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

DRUNKENNESS.See PENAL CODE (ACT XLV OF 1860),
s. 86 . . . I. L. R. 38 Mad. 479**E****EARNEST-MONEY.**

deposit of, forfeiture of—

See CONTRACT, BREACH OF.

I. L. R. 38 Mad. 801

EASEMENT.

See EASEMENTS ACT (V OF 1882).

infringement of—

See EASEMENT.

I. L. R. 38 Mad. 280

unknown to law—

See EASEMENT . . . 19 C. W. N. 864

1. ————— Light and Air—

Ancient light, infringement of—Nuisance—Measure of right—Requirement of light for the ordinary purposes of inhabitation or business of the tenement according to the ordinary notions of mankind—Concurrent findings of fact—Grounds of appeal relating not to fact, but to pure question of law. In this case which was an appeal in an action for damages for the infringement of the appellant's alleged rights of light and air, the Judicial Committee held that though there were concurrent findings of fact in the Courts below, yet the grounds of appeal did not relate to those findings but to the question whether the Courts below had taken the proper view of the legal rights of the appellants, and whether, accordingly, the test which they had applied on the question of the infringement of the appellants' rights was the correct one. That

EASEMENT—cont'd.

was a pure question of law which admittedly turned upon the interpretation to be given to the decision of the House of Lords in *Colls v. The Home and Colonial Stores*, [1904] A. C. 179, when considered in connection with the later decision of the House of Lords in *Jolly v. Kine*, [1907] A. C. 1. *Held*, further, that in *Colls Case*, [1904] A. C. 179, the legal test in such an action was formulated by Lord Davey as being that "the owner of the dominant tenement is entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitation or business of the tenement according to the ordinary notions of mankind, . . . The single question in these cases is still what it was in the days of Lord Hardwicke and Lord Eldon—whether the obstruction complained of is a nuisance," and the House of Lords in that case adopted that formulation of the law. In the judgment of the House of Lords in *Jolly v. Kine*, [1907] A. C. 1, there was an authoritative exposition of the decision in *Colls Case*, [1904] A. C. 179, and it was established that the law as stated by Lord Davey is the law as laid down by that decision, and that it accurately formulated the law on the subject. In the High Court, in the present case the Court of first instance adopted Lord Davey's opinion, and applied it consistently to the findings of fact to which he came; and the Appellate Court had substantially taken the same test. Their Lordships, therefore, affirmed the judgments of the Courts below, and dismissed the appeal. *PAUL v. ROBSON* (1914) . . . I. L. R. 42 Calc. 46

2. ————— Prescriptive right

to take water by means of definite mode of access—Whether owner of servient tenement may substitute some other means of access. When the owner of a dominant tenement has acquired a prescriptive right to take water from a tank on the servient tenement, and has for this purpose used a particular means of access for the statutory period, he has acquired a right to reach the water by means of such definite mode of access: the servient owner, at his own discretion, may not substitute for his use some other means of access. *JIBANANDA CHAKRABARTY v. KALIDAS MALIK* (1914) . . . I. L. R. 42 Calc. 164

3. ————— User of easement

for less than the prescriptive period—No right to sue for infringement. Incorporeal rights such as easements are not capable in an exact sense of being possessed; and unless an easement had ripened into a prescriptive one, mere enjoyment of the easement for any length of time short of the full period of prescription gives no right for the enjoyer to maintain an action against any person infringing such a user. Protection given in law to mere possession of corporeal things cannot be extended to such cases. *Acchanna v. Venkamma*, 5 Mad. L. J. 24, and *Kondapa Rajam Naidu v. Devarakonda Suryanarayana*, I. L. R. 31 Mad. 173, distinguished. English authorities reviewed. *NARASAPPAYYA v. GANAPATHI RAO* (1913)

I. L. R. 38 Mad. 280

EASEMENT—contd.

4. ————— *Right to discharge ancillary to the owners' land*

land from flowing towards the north through the defendants' land. The plaintiffs alleged that they were entitled to have the water on their land discharged through the defendants' land, but they did not claim it as an easement but as a right ancillary to their property which they had not parted with. *Held*, that there was such a right as that claimed by the plaintiffs, although the plaintiffs did not claim the right to discharge their water and did not in fact discharge their water on to the defendants' land by any definite channel. That the duty of the defendants was to allow the water from the plaintiffs' land to pass on through their land. It was then open to them to depose of it in the way they thought best. *RAMADHRY SINGH v JADUNANDAN SINGH* (1914)

19 C. W. N. 54

5. ————— *Right of way—*

Permanent tenures, held under same landlord—One, if may acquire right by prescription against the other—Prescription by tenant in possession inuring to owner's benefit—Grant implied upon severance, in cases of continuous easements—Continuous easement, right of way when—Permanent obligation of tenement—Grant inferred from long user alone—Easement of necessity—Grant if may be presumed upon severance—Suit for declaration of right of easement—Ill-servient owners, if necessary parties—Cause of action. A dominant owner has no cause of action against servient owners who have neither caused obstruction nor raised any objection to the exercise of his right of easement. In a suit for a declaration of his right of way he is not bound to make parties any servient owners other than those who have so obstructed or challenged his right. *Madan Mohan Chatteropadhyay v*

of a permanent tenure can acquire by prescription in respect of his tenure a right of easement against another permanent tenure held by another tenant under the same landlord. *Held*, however, upon the facts proved in the case which showed that the two tenements had at one time belonged to the same person, that the Court was justified in presuming an implied grant, and this notwithstanding that the right claimed was a right of way along a path which was a formed road though neither paved nor metalled, but which otherwise appeared to have been intended to be permanently attached to and for the use of the dominant tenement. That assuming that the path came into existence after the severance, the fact that

EASEMENT—contd.

for about sixty years since, the tenant in possession of the dominant tenement had been using the path was sufficient to justify the Court in inferring that the user had its origin in a grant, not as a matter of legal presumption, but as an inference of fact. On a severance of property a grant by the owner of one of the severed portions to the owner of the other can be presumed, and where the easement appears to be one of absolute necessity, such a presumption legitimately arises in the case. *MADAN MOHAN CHAKRAVARTY v SASHI BHUSAN MEKHERJI* (1915)

19 C. W. N. 1211

6. ————— *Easement—Un-*

known to law—Right to use another's land as a line, if may be acquired by prescription. Where plaintiff alleged that he along with the defendants erected latrines on land which did not belong to them and used them for a long series of years and thus acquired a right of easement. *Held*, that an easement of this description was unknown to law and the Court will not create a new species of easement. *HIMALAL RAY CHAUDHURI v LOULYATH SAHA* (1915)

19 C. W. N. 864

EASEMENTS ACT (V OF 1882).

7. III. (1)—

See WATERFLOW I. L. R. 33 Mad. 149

8. 15—*Essentials for the acquisition of an easement—* Easement enjoyment in assertion of ownership can create a right of easement. If a person walks along the land of another for the beneficial enjoyment of other land, and if the enjoyment of the other's land does not amount to exclusive possession there is no reason why his walking along the land without the permission of the true owner and in the assertion of a right to walk should not create in favour of the enjoyer a prescriptive right of easement, simply because, he mistakenly supposes that he is the owner of the land or asserts that his act of enjoyment is sufficient to give him the ownership by prescription. The mere claim of the higher right of ownership would not prevent a person from acquiring the lesser right of easement provided he could show that he asserted certain rights of enjoyment over the land in question for the benefit of another land belonging to him. S 15 of the Easements Act does not require that the title should be claimed as an easement, but only requires that the enjoyment should possess two properties, viz., (i) that it must be as of right without interruption and (ii) that it must be as an easement. The first quality

is that the enjoyment should be as an easement, and not that it should be in the assertion of a claim of an easement. *Narendra Nath Barui v. Abhay Charan Chatteropadhyay*, I. L. R. 34 Cal. 51, referred to. *Chandul Fulchand v. Manzaldas Goverdhanadas*, I. L. R. 16 Bom. 592, commented on. *Kosha v. Bhasani* (1912), I. L. R. 38 Mad. 1

EASEMENTS ACT (V OF 1882)—concl'd.

ss. 59, 60—License—Revocation—
Rights of transferee of property in respect of which
a license has been given. *Held*, that the rule laid
down by s. 59 of the Indian Easements Act, 1882,
is not independent of that laid down by s. 60,
and does not confer upon the transferee any
higher rights than those possessed by the trans-
feror. *RAS BEHARI LAL v. AKHAI KUNWAR*
(1914). I. L. R. 37 All. 91

EDITOR OF A NEWSPAPER.

— duties of—

See COMPANY. I. L. R. 38 Mad. 991.

EJECTMENT.

See HINDU LAW—HUSBAND AND WIFE
I. L. R. 38 Mad. 1036

See MADRAS ESTATES LAND ACT (I OF
1908), s. 8 ETC.

I. L. R. 38 Mad. 608, 843

— from “old waste” grounds—

See MADRAS ESTATES LAND ACT (I OF
1908), ss. 3 (7), 153 AND 157.

I. L. R. 38 Mad. 163

— suit for—

See FAZENDARI TENURE.

I. L. R. 39 Bom. 316

See JURISDICTION.

I. L. R. 38 Mad. 795

1. ——— Non-transferable
holding—Transfer—Ejectment by landlord—Limita-
tion Act (IX of 1908), s. 18. A landlord suing in
ejectment a purchaser of a non-transferable hold-
ing cannot succeed unless he makes out a case
under s. 18 of the Indian Limitation Act, where
the purchase took place more than 12 years before
the suit. *Probbabati Dassi v. Tiabatunnessa*,
17 C. W. N. 1088, followed. *PANCHKARI CHAT-
TERJI v. MAHARAJ BAHADUR SING* (1914)

19 C. W. N. 136

2. ——— Previous suit for
compensation for use and occupation without prayer
for ejectment, effect of—Acquiescence—Limitation.
That the effect of the plaintiff's predecessor bring-
ing a suit for compensation for use and occupa-
tion without a prayer for ejectment was not a
waiver of the right to eject and a recognition of
the defendants as tenants. It is open to an owner
of land first to sue a trespasser for compensation
and then to bring a suit for ejectment to assert
his right to the land. *RAJ KRISHNA RUDRA v.*
PHAKIR DOME (1913). 19 C. W. N. 478

ELECTION—

— of mahant of temple—

See HINDU LAW—ENDOWMENT.

I. L. R. 37 All. 298

ELECTRICITY ACT (IX OF 1910).

— ss. 14, 19—Responsibility of licensee to
make full compensation for any damage, detriment

ELECTRICITY ACT (IX OF 1910)—concl'd.

— s. 14—concl'd.

or inconvenience caused by him or by anyone em-
ployed by him—Damage, whether caused in the
exercise of the powers granted to the licensee. A
gas company laid a 3-inch main in a street in
Bombay. Subsequently an electric supply com-
pany caused cables contained in troughing to
be laid over this main in such a manner that the
main for the distance of some 36 feet was rendered
inaccessible for the purpose of removing the same
except by slinging the electric company's cables,
by reason of the position of the cables. It was
found that the work of laying the cables had not
been executed, nor must it be deemed to have
been executed, to the reasonable satisfaction of
the gas company. Subsequently the gas com-
pany desired to replace their 3-inch main with a
4-inch main and for this purpose opened up the
street in question, when they discovered the posi-
tion of the cables. On account of the position
of these cables the gas company were compelled to
make a diversion in the route taken by their 4-inch
main and claimed that the electric supply company
should pay the cost thereof; the latter company
refused to do so. *Held*, that the damages, if
any, suffered by the gas company were damages
recoverable under s. 19 of the Indian Electricity
Act of 1910 as the damage alleged lay in the gas
company being deprived of access to its own prop-
erty (the main) which was inflicted once and for
all when the electric supply company laid their
cables over the main, and that it was a question
of fact whether such damage had been committed.
Held, further, that the gas company were not com-
pelled to proceed under s. 14 of the Act and did
not lose their remedies against the electric supply
company by reason of their not having availed
themselves of the provisions of that section.
Quære: whether a licensee causing only as little
damage, detriment and inconvenience as may be is
liable for damages under s. 19 of the Indian Elec-
tricity Act (IX of 1910). *In re BOMBAY GAS*
COMPANY, LTD. AND BOMBAY ELECTRIC SUPPLY
AND TRAMWAYS COMPANY, LTD. (1914)

I. L. R. 39 Bom. 124

EMBANKMENT ACT (BENG. II OF 1882).

See SALE FOR ARREARS OF REVENUE.

I. L. R. 42 Calc. 765

EMBANKMENT CHARGES.

See SALE FOR ARREARS OF REVENUE.

I. L. R. 42 Calc. 765

EMBARRASSMENT.

— of debtor—

See INTEREST. I. L. R. 42 Calc. 652

ENCROACHMENT.

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

See MADRAS DISTRICT MUNICIPALITIES
ACT (IV OF 1884), s. 168.

I. L. R. 38 Mad. 456

ENCROACHMENT—conold.

See PUBLIC NUISANCE

I. L. R. 42 Calc. 702

ENDORSEMENT.

of payments by mortgagor—

See MORTGAGE BY MINOR.

I. L. R. 38 Mad. 1077

ENDOWMENT.

See HINDU LAW—ENDOWMENT

ENEMY SHIP.

See CARGO . . I. L. R. 42 Calc. 334

ENJOINMENTS.

construction of—

See MADRAS IRRIGATION CESS ACT (VII OF 1868), s. 1 I. L. R. 38 Mad. 297

ENGLISH LAW OF WATERS.

See FISHERY . . I. L. R. 42 Calc. 489

ENJOYMENT.

adverse—

See EASEMENTS ACT (V OF 1882), s. 15.
I. L. R. 38 Mad. 1**EPIDEMIC DISEASES ACT (III OF 1897).**

ss. 2, 3—

See PENAL CODE (ACT XLV OF 1860),
ss. 188 AND 209

I. L. R. 38 Mad. 602

EQUITABLE ASSIGNMENT.

See ADMINISTRATOR GENERAL'S ACT (II OF 1874), ss. 23, 34 AND 35.

I. L. R. 38 Mad. 500

EQUITIES ON PARTITION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 60 AND 61.

I. L. R. 38 Mad. 310

EQUITY OF REDEMPTION.

See MORTGAGE I. L. R. 39 Bom. 55

sold and pre-empted—

See BUNDEIKHAND ALIENATION ACT
(II OF 1903), s. 3.

I. L. R. 37 All. 467

Extinction—Mortgagor passing a rajinama to mortgagee for the land—Mortgagee executing khuliyat to pay Government assessment. In 1876, the plaintiff mortgaged the land in dispute to the defendants; and in 1879 passed a rajinama relinquishing all his occupancy rights in the said land in favour of the defendants. The latter at the same time gave a complementary khuliyat agreeing to pay Government assessment on the land. The plaintiff having sued to redeem the mortgage. Held, dismissing the suit, that the rajinama and khuliyat effectually extinguished the plaintiff's equity of redemption. *VENKAT NARAYAN v. GOPAL RAMCHANDRA* (1914)

I. L. R. 39 Bom. 55

ESTATE.

See MADRAS ESTATES LAND ACT (I OF 1908) . . . I. L. R. 38 Mad. 33

ESTATES LAND ACT (MAD. I OF 1908).

five days as prescribed by s. 115 of the Act is maintainable in a Civil Court. *Gousar Mohideen Sahib v. Muthulu Chettiar*, (1914) Mad. W. N. 55, followed *Dorassamy Pillai v. Muthusamy Moopan*, I. L. R. 27 Mad. 94, and *Zemindar of Ettayapuram v. Santarappa Reddai*, I. L. R. 27 Mad. 483, referred to s. 189 of the Act commented on. *CHIDAMBARAM PILLAI v. MUTHAMMAL* (1914)
I. L. R. 38 Mad. 1042

ESTATES PARTITION ACT (BENG. V OF 1897).

ss. 119, 88—*Suit against order of Revenue Court, when her* On the application of defendant, a co-sharer, for the partition of his share in a lawsuit proceedings under the Estates Partition Act were taken. Throughout the proceedings no question was raised under s. 88 and no order was passed under that section. The plaintiff, another co-sharer, objected only to the mode in which the common lands were divided but never took the objection that more land was allotted to the estate under partition than that estate was entitled to. The plaintiff's objection was rejected.

dispute as to the quantum of interest each co-sharer has in joint lands but the question is as to whether a particular piece of land is part of the joint lands or is the exclusive property of a co-sharer, the question is not one under proviso (i) to s. 119 of the Act. *GURUBHAI PRONHAD TEWARI v. KALI PRASAD NARAIN SINGH* (1914)

19 C. W. N. 1323

ESTOPPEL.

See BENAMI TRANSACTION.

I. L. R. 37 All. 557

See BOMBAY CITY LAND REVENUE ACT
(Bom. II of 1876), ss. 30, 35, 39, 40.

I. L. R. 39 Bom. 684

ESTOPPEL—concl'd.

See LIMITATION I. L. R. 38 Mad. 374

See TRADE MARK.

I. L. R. 42 Calc. 262

ESTOPPEL BY CONDUCT.

after attaining majority—

See COMPANY I. L. R. 39 Bom. 331

EVIDENCE.

See CRIMINAL CASE.

I. L. R. 42 Calc. 374

See CRIMINAL PROCEDURE CODE, s. 107

I. L. R. 37 All. 33

See CRIMINAL PROCEDURE CODE, ss. 107
AND 117 I. L. R. 37 All. 30

See DISPUTE CONCERNING LAND.

I. L. R. 42 Calc. 381

See EVIDENCE ACT (I OF 1872).

See EXTRINSIC EVIDENCE.

See HINDU LAW—RELIGIOUS ENDOW-
MENT I. L. R. 42 Calc. 536

See PRE-EMPTION I. L. R. 37 All. 524

See PUBLIC PROSECUTOR, DUTY OF.

I. L. R. 42 Calc. 422

See RECEIPT I. L. R. 42 Calc. 546

additional, on appeal—

See CIVIL PROCEDURE CODE (ACT V OF
1908), O. XLI, r. 27.

I. L. R. 38 Mad. 414

nature of—

See LIMITATION ACT (XV OF 1877), SCH.
II, ART. 91 I. L. R. 38 Mad. 321.

of intention—

See HINDU LAW—ALIENATION.

I. L. R. 37 All. 369

where witness not sworn—

See OATHS ACT (III OF 1873), ss. 5, 13.

I. L. R. 38 Mad. 550

1. *Admissibility of evidence—Birth-day books, entries in, if admissible to prove age—Husband's evidence as to wife's age, admissibility and value of—Affidavit by husband, before question litigated, as to wife's age how far admissible.* Where the evidence showed a practice to make entries of dates of births in books kept for the purpose of obtaining the opinion of astrologers as to good or ill fortune: *Held* that under the Straits Settlements Ordinance No. 3 of 1893, the provisions of which in this respect are identical with those of the Indian Evidence Act, the birth-day books were admissible to prove the dates of birth if the parol evidence concerning them were accepted. A husband's evidence as to his wife's age, which was obviously in the nature of hearsay, being admissible for what it was worth, an affidavit sworn by him on a previous date which

EVIDENCE—concl'd.

showed that he had sworn to the same date before the question arose was for that purpose admissible in evidence. *CHUAH HOOI GNOH NEOH v. KHAW SIM BEE* (1915) 19 C. W. N. 787

2. *Disbelief of greater part of the evidence of the prosecution witnesses—Conviction on the residue—Propriety of the conviction—Practice.* When the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it would be dangerous to convict the accused on the residue without corroboration. *HARI KRISHNA v. EMPEROR* (1914) I. L. R. 42 Calc. 784

3. *Evidence taken by a Court without jurisdiction—Effect of consent to treat it as evidence, if relevant.* Consent or want of objection to the reception of evidence which is irrelevant cannot make the evidence relevant, but consent or want of objection to the wrong manner in which relevant evidence should be brought on record of the suit disentitles parties from objecting to such evidence in a Court of Appeal. *Miller v. Madho Dass*, I. L. R. 19 All. 76, 92, followed. The fact that it was evidence taken previously by a Court which was held to have had no jurisdiction to try the case and take the evidence and that it was consented to be treated as evidence does not affect the validity of the consent. *Quere*: Whether in a case falling under s. 33 of the Evidence Act, evidence recorded by a Court can be regarded as not given in a judicial proceeding on the mere ground that the decree of the Court was subsequently set aside for defect of jurisdiction. *SRI RAJAH PRAKASARAYANIM GARU v. VENKATA RAO* (1912) I. L. R. 38 Mad. 160

EVIDENCE ACT (I OF 1872).

ss. 9, 11—*Omission of entry of payment in account book, if relevant.* The absence of an entry of payment in an account book is a relevant fact not under s. 34 but under ss. 9 and 11 of the Indian Evidence Act. *GANGARAM AGARWALLA v. LACHIRAM KISHEN DYAL* (1914) 19 C. W. N. 611

ss. 10, 14, 15, 54, 135, 143, 154—

See CHARGE I. L. R. 42 Calc. 957

s. 13—*Evidence—Admissibility of document affecting the right of a person, who is no party to it, against such person.* The plaintiff sued for a five annas share in the *maliki* right in a certain land. His case was that his mother's father owned a ten annas share, half of which he gave to the plaintiff and the other half to the plaintiff's mother. The contesting defendant who was the brother of the plaintiff's grandfather contended that he and his brother owned the ten annas in equal shares and the effect of the gift to the plaintiff was to convey only two annas and a half, although it purported to convey more. The lower Appellate Court gave effect to this contention relying on two documents, one executed by the plaintiff's mother, acting through his father in favour of the contesting defendant in which it was

EVIDENCE ACT (1 OF 1872)—*contd.*s. 13—*concl'd*

recited that the gift of ten annas by the plaintiff's grandfather was a mistake and that he was entitled to deal, and intended to deal, with five annas only and the other *patta* executed by the plaintiff's mother and father in which they stated that a five annas share in the property belonged to the contesting defendant. *Held* that, both the documents were inadmissible in evidence against the plaintiff who was a stranger to them. That the ruling as to the admissibility of the documents in *Durka Nath v. Mukundalal*, 5 C. L. J. 55, is *obiter*. *ABDUL ALI v. SYED REJAN ALI* (1913)

19 C. W. N. 468

s. 30—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 215 and 342

I. L. R. 38 Mad. 302.

Evidence—Confession—

Admissibility of, in evidence against co-accused—Joint trial. One out of several accused persons who were being tried jointly for an offence under s. 193 of the Indian Penal Code pleaded guilty and made a statement implicating himself and other accused. The Magistrate, however, did not convict him merely upon his plea of guilty, but upon the

do by him
sion of this
the others.

Magistrate was not only admissible but that in the circumstances of the case the Magistrate would not have exercised a sound discretion in convicting the confessing accused at once on the strength of his own statement alone. *EXPANOR v. DIR NARAIN* (1913)

I. L. R. 37 All. 247

s. 32—Statement of relationship by deceased person, admissibility of. The plaintiff brought a suit on two hand notes executed by the defendant. The defence was that the defendant was a minor when he took the loans. Besides adducing oral evidence as to the age of the defendant, the plaintiff put in the record of a case under Act VIII of 1890, which contained a peti-

Appellate Court held that this statement was admissible in evidence. The High Court in appeal reversed the decision. *Held* (on review of judgment), that the statement was admissible in evidence under s. 32 cl. (3) of the Evidence Act. *Lim Chandra Dutt v. Jogtwar Narain Doo*, I. L. R. 20 Cal. 758, followed. *RAM KISHORE SARKHAN v. MANINDRA MOHAN RAY* (1915)

19 C. W. N. 610

s. 32 (5) and (6)—

See HINDU LAW—Minor

I. L. R. 38 Mad. 166

s. 32, cl. (6)—Evidence—*Id est*—A document, ancient and genuine, purporting to be

EVIDENCE ACT (1 OF 1872)—*contd.*s. 32—*concl'd*

a family pedigree, was produced in evidence in a mutation case by one Jiraj. The record was brought before the civil Court in a suit in which the plaintiff's relationship to one Hulas, the last male owner of certain property, was in question. Jiraj stated that he had received the pedigree from his grandfather. It was not proved who had prepared the pedigree. *Held*, that it was not necessary to show who had made the statements mentioned in the pedigree and that it was admissible in evidence under s. 32 cl. (6), of the Evidence Act. *JAHANGIR v. SHILORAJ BINOH* (1915)

I. L. R. 37 All. 600

ss. 35 and 82—

See HINDU LAW—Minor

I. L. R. 38 Mad. 166

ss. 35 and 83—*Chittas* prepared by Government for resuming surplus lands acquired for roadway, if public document—Admissibility as private document. Where it was argued that *chittas* prepared by Government for the purpose of resuming surplus lands acquired for the purpose of a roadway in the possession of persons without title were not admissible in evidence as public documents, *Held*, that the *chittas* were admissible as part and as explanatory of the resumption proceedings which were regularly taken, and together with the petition upon which the proceedings were initiated, the reports of the Collector and the orders of the Board of Revenue furnished valuable evidence that Government recognised the right of one of the parties to hold the land described in the *chittas* as rent free. *Ram Chandra Saa v. Humsedhar Nask*, I. L. R. 9 Cal. 741, referred to. Entries in a public register kept in the Survey Office for the public benefit and under the sanction of official duty are relevant under s. 35 of the Evidence Act, irrespective of whether the clerk who actually wrote the entries had any personal knowledge or whether the register was a copy of a previous register which had become untidy. *GRHAM v. PHANINDRA NATH MITRA* (1915)

19 C. W. N. 1033

s. 52—

See SPECIFIC RELIEF ACT (I OF 1877)

s. 39

I. L. R. 39 Bom. 149

ss. 54, 165—

See PRACTICE I. L. R. 39 Bom. 326

ss. 74, 68—Order of Probate Court granting letters of administration with copy of will annexed, if public document—Certified copy of will admissible—Admission as secondary evidence, though no steps taken to call for production of original. The certified copy of an order of the Probate Court to the effect that letters of administration be granted to the person named with a copy of the will annexed to the deceased testator is admissible, the latter being a public document within the meaning of s. 74 of the Indian Evidence Act. Where it appeared that the original letters were a

EVIDENCE ACT (I OF 1872)—contd.

s. 74—concl'd.

the possession of parties interested in opposing the plaintiff's claim, but the plaintiff did not take steps to call upon them to produce them: *Held*, that there being no question of the genuineness of the document, these steps should have been waived by the Court and the document admitted in evidence under s. 66 of the Evidence Act. *HABIRAM DAS v. HEM NATH SARMA* (1915) 19 C. W. N. 1068

s. 92—

See RECEIPT . I. L. R. 42 Calc. 546

Registered sale-deed—

Price specified in the sale-deed—Recital as to amount of price, essential term of contract of sale—Oral agreement as to higher price in discharge of a mortgage—Evidence inadmissible. The amount of the price agreed to be paid is an essential term of a contract of sale; and consequently no evidence of an oral agreement at variance with the provisions of a registered sale-deed as to the amount of the price fixed for the sale is admissible under s. 92 of the Indian Evidence Act. *Cowasji Ruttonji Limboowalla v. Burjoji Rustomji Limboowalla*, I. L. R. 12 Bom. 335, followed. *Vasudeva v. Narasamma*, I. L. R. 5 Mad. 6, *Kumara v. Srinivasa*, I. L. R. 11 Mad. 213, *Hukumchand v. Hiralal*, I. L. R. 3 Bom. 159, and *Gopal Singh v. Laloo Lall*, 10 C. L. J. 27, explained. *Ram Baksh v. Durjan*, I. L. R. 9 All. 392, *Indarjit v. Lal Chand*, I. L. R. 18 All. 168, *Balkishen Das v. Legge*, I. L. R. 22 All. 149, *Selamba Goundan v. Palani Goundan*, (1913) Mad. W. N. 650, and *Probat Chandra Gangapadhya v. Chirag Ali*, I. L. R. 33 Calc. 607, referred to. *ADITYAM IYER v. RAMA KRISHNA IYER* (1913) . I. L. R. 38 Mad. 514

s. 92, provs. 1 and 3—

Sale-deed—Property,

vesting of—Oral evidence contrary to its tenor, admissibility of—Document operative at once—Evidence as to vesting of property at a future time, inadmissible—Rule of English Law, different. An executant of an instrument (which was not a sham transaction but intended to operate at once), cannot be permitted to set up or prove that the instrument, which according to its tenor vested the property in the grantee at once, was in reality intended to vest it only at a future time or after the death of the executant. S. 92, proviso 1, of the Indian Evidence Act, has no application to a case where the instrument represents what the parties intended to put down in writing, though it might not be in accordance with what they intended to do and with the legal effect that they secretly wanted to bring about but which for some reason they did not want to put in writing. The rule of English Courts of Equity permitting evidence to be given to show that a document was intended to operate in a manner different from the plain and apparent meaning of its language cannot be followed in India, as it is contrary to the provisions of s. 92 of the Indian Evi-

EVIDENCE ACT (I OF 1872)—contd.

s. 92—cont'd.

dence Act. *Balkishen Das v. Legge*, I. L. R. 22 All. 149, *Achutaramaraju v. Subbaraju*, I. L. R. 25 Mad. 7, *Dattoo v. Ramachandra*, I. L. R. 30 Bom. 119, and *Challa Venkatta Reddy v. Derabhaktuni Mruthunjayadu*, (1912) Mad. W. N. 164, followed. *Jibun Nissa v. Asgar Ali*, I. L. R. 17 Calc. 937, referred to. *Chaudhri Mehdi Hasan v. Muhammad Hassan*, I. L. R. 28 All. 439, *Ramalinga Mudali v. Ayyadorai Nainar*, I. L. R. 28 Mad. 124, and *Amirthathammal v. Periasami Pillai*, I. L. R. 32 Mad. 325, distinguished. *MOTTAYAPPAN v. PALANI GOUNDAN* (1913) . I. L. R. 38 Mad. 226

s. 92 and prov. 2—

Suit on promissory note—Plea of an oral agreement purporting to vary note—Admission in pleadings—Admission subject to condition—Absence of substantive proof of oral agreement—Onus of proof. Although there are cases where it is allowable to urge an oral agreement which would have the effect of leaving matters otherwise than if they had depended on the written agreement alone, the oral agreement must be clearly proved, and the onus of doing so is on him who sets it up. In a suit on a promissory note dated 23rd December 1907, executed by the defendant (appellant) and a firm of H. C. and payable on demand, the defendant pleaded that by an oral agreement between the parties his liability on the note was to cease on 30th January 1908, a simple acknowledgment by H. C. being then substituted for the note. The plaintiff stated in his plaint that the defendant's liability was only to come to an end at the date named provided he had then received full security for advances he had made to H. C. which were only partially secured. The parties went to trial and were allowed to give evidence, on which the Trial Judge in the High Court taking it as admitted that the defendant's liability ceased on 30th January 1908, and not accepting as proved the allegation of the plaintiff as to further security, decided in favour of the defendant, and dismissed the suit. The Appellate Court reversed that decision holding that evidence of the oral agreement was inadmissible under s. 92 of the Evidence Act (I of 1872). *Held*, by the Judicial Committee, that a mere amendment of the pleadings would have brought the defendant's contention within proviso (2) of s. 92, as being an oral agreement as to which the promissory note was silent, and which was not inconsistent with its terms. In that view their Lordships were of opinion that it would not be satisfactory to decide against the defendant without considering the evidence, and they held that the failure of the plaintiff to prove his version of the transaction did not necessarily (as held by the Trial Judge) imply that the defendant's case was thereupon established. The agreement alleged by the defendant must be substantively proved, and that had not been done. It was permissible for a tribunal to accept part, and reject the rest of a witness's testimony; but an admission in pleading cannot

EVIDENCE ACT (I OF 1872)—*concl.*

— s. 92—*concl.*

be so treated, and if it be made subject to a condition it must either be accepted with the condition, attached, or not accepted at all. An admission, therefore, that the note was to be held as satisfied on 30th January 1908 by a new debt on the part of H. C., provided that full security was found for the whole debt by that date, could not be treated as an admission that in any case the promissory note was to be held as satisfied by 30th January. *MOTABHOY MULLA ENNAHOY v. MULLA HARIDAS* (1915). I. L. R. 39 Bom. 399

— ss. 106 and 114, III. (g)—

See MADRAS REGULATION (XXV OF 1902).

S. 4. I. L. R. 38 Mad. 620

— s. 116—

See *BESAMI TRANSACTION*.

I. L. R. 37 All. 557

— s. 117—

See *TRADE MARK*.

I. L. R. 42 Calc. 282

— ss. 143, 154—

See *CROSS EXAMINATION*.

I. L. R. 42 Calc. 957

— s. 145—

See *HINDU LAW—ADOPTION*.

I. L. R. 39 Bom. 411

See *HINDU LAW—MINOR*.

I. L. R. 38 Mad. 166

— ss. 145, 33—*Depositions of witnesses in a criminal trial, use of, in supporting or contradicting them in a subsequent civil suit—Irregularity in procedure. In the absence of proof of circum-*

stances be used even to support the evidence the witnesses gave in the civil suit. Where they were used to contradict the witnesses, but without giving them opportunity to tender their explanation or to clear up the particular points of ambiguity or dispute: *Held*, that the procedure was contrary to general principle and to the specific provisions of s. 145 of the Evidence Act. *Palabai v. Govind Kashinath*, I. L. R. 24 Bom. 213, 221, approved. *BAL GANGADHAR TILAK v. SHRINIVAS PANDIT* (1915). 18 C. W. N. 729

— s. 157—

See *CRIMINAL PROCEDURE CODE (ACT V OF 1908)*, s. 162.

I. L. R. 39 Bom. 53

— s. 167—*Application in second appeal, when finding of fact arrived at, in part, on inadmissible evidence. Where in a suit on a bond, plaintiff sought to save the bar of limitation by proving payment of interest by the defendant at various*

EVIDENCE ACT (I OF 1872)—*concl.*

— s. 167—*concl.*

on a date on which the defendant averred he was at Pegu, and which plea the latter sought to establish by producing a certificate which he swore he had received from the hands of the manager of the Pegu Club; and the District Judge found first that the plaintiff's evidence in support of his case was "discrepant" and "not satisfactory" and went on to hold that there was sufficient proof of the certificate,—and in this view dismissed the suit. *Held*, that the certificate be-

EXCHANGE OF LANDS.

See *TRANSFER OF PROPERTY ACT (IV OF 1882)*, ss. 118, 119, 120, 54 AND 55, CL. 6 (b). I. L. R. 38 Mad. 519

EXCISE INSPECTOR.

See *PENAL CODE ACT (XLV OF 1900)*, ss. 332, 323. I. L. R. 37 All. 353

EXCLUSION OF FEMALES.

See *HINDU LAW—INHERITANCE*.

I. L. R. 43 Calc. 1179

EXECUTANT.

— personal liability of—

See *NEGOTIABLE INSTRUMENTS ACT (XVI OF 1881)*, s. 28.

I. L. R. 33 Mad. 432

EXECUTION.

See *EXECUTION OF DECREE*.

See *EXECUTION, STAY OF*.

Civil Procedure Code (Act V of 1908), s. 141, O. II, r. 2—*Non-applicability of, to execution applications—consolidating statute, construction of. The dismissal of a suit on the ground that no suit would lie to recover means profits subsequent to the date of a previous decree which awarded subsequent means profits is no bar to a claim thereto in execution of that decree. The fact that a decree holder made a previous application for execution to recover means profits only for three years subsequent to the plaint and not for a further period also is not a bar under O. II, r. 2, Civil Procedure Code, or s. 141, Civil Procedure Code, as now enacted, to another execution application for recovery of means profits for the further period. *Thakur Prasad v. Fakir Ali*, I. L. R. 17 All. 166, e.c. 22 I. J. 41, followed. *Nasir Ali v. Aslam Ali*, 12 C. L. J. 6, not followed. There is nothing in the Code of Civil Procedure to prevent a decree-holder from presenting successive applications for realising different portions of his decree. When the words of a consolidating statute are clear their effect cannot be cut down by a comparison with the language of earlier statutes. s. 141, Civil Procedure Code, is intended to apply to proceed-*

EXECUTION—concl'd.

ings in Civil Courts such as probate, etc. *BALA-SUBRAHMANYA CHETTI v. SWARNAMMAL* (1913)
I. L. R. 38 Mad. 199

EXECUTION APPLICATION.

See EXECUTION.

I. L. R. 38 Mad. 199

EXECUTION OF DECREE.

See AGRA TENANCY ACT (II OF 1901),
s. 20, CL. (2) . I. L. R. 37 All. 278

See ASSIGNEE OF A MONEY-DECREE.
I. L. R. 38 Mad. 36

See CIVIL PROCEDURE CODE (1882).
I. L. R. 37 All. 542

See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 48 I. L. R. 39 Bom. 256

See CIVIL PROCEDURE CODE (1908) ss.
68 AND 70, SCH. III.
I. L. R. 37 All. 334

See CIVIL PROCEDURE CODE (1908), s.
73; O. XXXVIII, RR. 5, 8 AND 10;
O. XXI, RR. 52 AND 63.
I. L. R. 37 All. 575

See CIVIL PROCEDURE CODE (1908), O.
XXI, R. 89 . I. L. R. 37 All. 591

See CIVIL PROCEDURE CODE (ACT V OF
1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 959

See CIVIL PROCEDURE CODE (1908),
O. XLV, R. 15.
I. L. R. 37 All. 567

See CIVIL PROCEDURE CODE (1908),
O. XLV, RR. 15 AND 16.
I. L. R. 38 Mad. 832

See DECREE . I. L. R. 39 Bom. 80

See HINDU LAW—JOINT FAMILY.
I. L. R. 37 All. 214

See HINDU LAW—SUCCESSION.
I. L. R. 37 All. 545

See LIMITATION ACT (XV OF 1877), SCH.
II, ART. 179 I. L. R. 39 Bom. 20

See MALABAR TENANTS' IMPROVEMENTS
ACT (MAD. I OF 1900), SS. 3 AND 5.
I. L. R. 38 Mad. 954

See RES JUDICATA.
I. L. R. 37 All. 589

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 89 I. L. R. 37 All. 414

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 99 . I. L. R. 37 All. 165

application for—

See EXECUTION PROCEEDINGS.
I. L. R. 37 All. 518

Baroda-Court decree—

See DECREE . I. L. R. 39 Bom. 34

EXECUTION OF DECREE—concl'd.

deed of conveyance, obtained in—
See CIVIL PROCEDURE CODE (ACT V OF
1908), O. II, R. 2.

I. L. R. 38 Mad. 698

1. *Shebait—Claim preferred by successor in office of judgment-debtor (adverse to his own interests) as the legal representative—Order made, whether under scope of Civil Procedure Code (Act V of 1908), s. 47, or O. XXI, rr. 53, 60—Appeal therefrom, competency of—Civil Procedure Code (Act V of 1908), s. 2, sub-s. (2), ss. 96, 104; O. XLIII, r. 1.* Where X in execution of a decree for money against Y as shebait of a deity attached and proceeded to sell properties of which Y or his successor in office had alleged that he was in possession, not as shebait of the deity, but in his own right: *Held*, that the case did not fall within the scope of s. 47 of the Civil Procedure Code of 1908 as Y in his character of shebait, the only character in which he was a party to the suit, could not rightly be deemed the same person in his character as a private individual. *Kartick Chandra Ghose v. Ashutosh Dhara*, I. L. R. 39 Calc. 298, followed. That the order of the original Court must be taken to have been made under r. 60 of O. XXI, which recognised a broad distinction between the representative character and the personal character of the same individual: and, that, in consequence, the appeal to the Subordinate Judge was incompetent. *Punchanun v. Rabia Bibi*, I. L. R. 17 Calc. 711, distinguished and explained. *Per* MOOKERJEE J. When X in execution of a decree for money against Y seeks to proceed against Z as the legal representative of Y who is liable only to the extent of the assets of Y in his hands, and a question arises whether a particular property does, or does not, constitute such assets, it must be determined by the execution Court under s. 47 of the Code. *Per* BEACHCROFT J. If the claim of the objector is really in his own interests as representative of the judgment-debtor, the case will come under s. 244 (of the Code of 1882); if the claim is adverse to his interest as representative, it will not. *UPENDRA NATH KALAMURI v. KUSUM KUMARI DAS* (1914)
I. L. R. 42 Calc. 440.

2. *Attachment of undivided share in house—Conditional decree for partition pending attachment—Purchase of judgment-debtor's share by decree-holder not entitled to benefit of decree for partition.* A decree-holder attached in execution of his decree his judgment-debtor's undivided share in a house. Pending the attachment the judgment-debtor sued for partition of the house and obtained a decree for separate possession of her share conditional on payment of Rs. 237 into Court. The decree-holder then brought to sale the share allotted to his judgment-debtor, and, having paid into Court the Rs. 237 which the judgment-debtor had omitted to pay, asked for delivery of possession of the specific share purchased. *Held*, that, whether or not the decree-holder might ultimately be entitled to the

EXECUTION OF DECREE—*contd.*

full benefit of the decree for partition in favour of his judgment-debtor on payment of the sum of Rs. 237, all he acquired by his purchase was a right to be put into possession of the undivided share to which his judgment-debtor was entitled. *RAM DULARI v. BALAN RASTI* (1914)

I. L. R. 37 All. 120

3. *Construction of decree—Decree for maintenance based on an arbitration award.* A decree was passed by the High Court in a second appeal from the decree of a Court of Revenue in terms of an arbitration award to the following effect: Possession of the land claimed was to be given to the plaintiffs, who were to pay to the defendant half-yearly a maintenance allowance, partly in grain and partly in cash. It was provided further that if the maintenance allowance was not paid, the defendant should enforce payment by taking proceedings in a competent Court. *Held*, on a construction of the decree, that it was not merely declaratory of the defendant's right to receive maintenance and could be executed.

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I. L. R. 37 All. 97

4. *Limitation—Limitation Act (IX of 1908), Art. 182, Sch. I—*

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attachment of immovable property in execution of a decree an inventory of the property to be attached with a reasonably accurate description of the same, as required by O. XVI, r. 12, of the*

Notwithstanding this the decree was again put into execution against the respondents who again objected but allowed their objection to be dis-

I. L. R. 37 All. 527

5. *Plea of adjustment—Previous adjudication.* Upon an application being made for the execution of a decree, a compromise was entered into between the decree holder

one and the respondents were consequently liable for the balance of the decretal amount. *DANRA SINGH v. MEHAR ALI KHAN* (1915)

I. L. R. 37 All. 531

EXECUTION PROCEEDINGS.

Application for execution was struck off and file sent to record room—Second application for revival of the first—Limitation. An application for execution was made on the 1st of December, 1908, for sale of certain property. The case was sent to the Collector for execution. The Collector discovered that part of the property sought to be sold belonged to persons other than the judgment-debtor and he sent the case back to the Subordinate Judge for order. The Subordinate Judge called upon the plader for the decree-holders to make a statement. No statement having been made the application was struck off and the file was sent to the record room. The present application for execution was made on the 20th of December, 1913. *Held*, that it was an application to revive the execution proceedings which had been suspended and not dismissed, and that it was therefore not barred by limitation. *YAKUB ALI v. DEBUA PRASAD* (1915)

I. L. R. 37 All. 518

EXECUTION SALE.

See CIVIL PROCEDURE CODE (ACT V of 1908), ss. 47 and 50.

I. L. R. 33 Mad. 1076

See LIMITATION ACT (IX of 1908), s. 22

I. L. R. 33 Mad. 837

EXECUTION, STAY OF.

Order of, by Appellate Court—No communication to lower Court, effect of—When order takes effect. An order of an Appellate Court staying further proceedings in the lower Court, such as holding a sale, etc., takes effect from the time it is pronounced and not from the time it is officially communicated to the lower Court and a sale held contrary to such an order whether with or without knowledge of it is liable to be set aside as having been held without jurisdiction. *Per SPENCER, J.*—The lower Court should have postponed the sale when having itself had no official information of the order of the Appellate Court it was moved by the party on the ground of such an order. *Per SADASIVA AYYAR, J.*—The sale under such circumstances is so gravely irregular that it must be set aside even without proof of injury. *Madanmaram v. Routhier Shinda Naymar v. Kuppusami Aiyangar*, I. L. R. 33 Mad. 74, dissented from by SADASIVA AYYAR, J., and distinguished by SPENCER, J. *Hem Chandra Kar v. Mahura Nandlal*, 16 C. B. N. 1031, and *Sati Nath Saha v. Ratanam Nair*, 15 C. L. J. 325, followed. *RAMANATHAN v. ARUNACHILLAM* (1913). I. L. R. 33 Mad. 766

EXECUTOR.

Assent of—

See SUCCESSION ACT (X of 1925), s. 187

I. L. R. 33 Mad. 474

conveyance by—

See VENDOR AND PURCHASER.

I. L. R. 42 Cal. 54

EXECUTOR—concl'd.

——— Liability of—

See INCOME TAX I. L. R. 42 Calc. 151

——— not brought on the record—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 164 AND 181

I. L. R. 38 Mad. 442

EX PARTE DECREE.

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13 I. L. R. 37 All. 208

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 164 AND 181.

I. L. R. 38 Mad. 442

See RES JUDICATA.

I. L. R. 37 All. 484

See SUMMONS I. L. R. 42 Calc. 67

EXPLOSIVE SUBSTANCE.

The term "explosive substance" as used in s. 4 (b) of Act VI of 1908 includes *any part* of an apparatus, machine, or implement intended to be used or adapted for causing or aiding in causing any explosive substance, and "by means thereof" does not mean by means thereof alone. *R. v. Charles, 17 Cox. 499*, referred to. *AMRITA LAL HAZRA v. EMPEROR* (1915) I. L. R. 42 Calc. 957

EXPLOSIVE SUBSTANCES ACT (VI OF 1908)

——— s. 4 (b)—

See CHARGE I. L. R. 42 Calc. 957

EXPORTATION.

See TRADING WITH THE ENEMY.

I. L. R. 42 Calc. 1094

EXPROPRIETARY TENANT.

See ADVERSE POSSESSION.

I. L. R. 37 All. 22

EXTRADITION ACT (XV OF 1903).

——— ss. 7, 15—

See EXTRADITION WARRANT.

I. L. R. 42 Calc. 793

EXTRADITION WARRANT.

——— by Resident in Nepal—

See REVISION I. L. R. 42 Calc. 793

EXTRINSIC EVIDENCE.

——— admissibility of—

See HINDU LAW—ADOPTION.

I. L. R. 38 Mad. 1105

EX-TRUSTEE.

——— suit by an, for reimbursement—

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 120 I. L. R. 38 Mad. 260

EYE-WITNESSES.

See PUBLIC PROSECUTOR, DUTY OF.

I. L. R. 42 Calc. 422

F**FALSE COMPLAINT.**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195.

I. L. R. 38 Mad. 1044

See FALSE AND VEXATIOUS COMPLAINT.

FALSE AND VEXATIOUS COMPLAINT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 250 AND 423.

I. L. R. 38 Mad. 1091

FAMILY SETTLEMENT.

See CONTRACT I. L. R. 38 Mad. 788

FATHER.

See HINDU LAW—MORTGAGE.

I. L. R. 42 Calc. 1068.

——— contract to sell by—

See HINDU LAW—ALIENATION.

I. L. R. 38 Mad. 1187

FAZENDARI TENURE.

Sub-case by a Fazendar. The plaintiff, claiming under the original Fazendar, sublet certain land to the defendant's predecessor. The agreement, after reciting (*inter alia*) that the sub-tenant took the land on Fazendari tenure, continued:—"I shall live there till the Wadi remains in your possession. If the Wadi ceases to be in your possession, and if the land be required, you are to pay me the valuation of the said house whatever the same may come to:" *Held*, on the facts, that, on the true construction of the lease, the plaintiff was not entitled to eject the defendants. The meaning of the word 'Fazendari,' when it occurs in a written document embodying the contract between the parties, considered, and the remarks of Farran J. in *Parmanandas Jivandas v. Ardeshtir Framji*, I. L. R. 39 Bom. 320 note, approved. *YESHWANT VISHNU v. KESHAVRAO BHAIJI* (1914) I. L. R. 39 Bom. 316

FEMALES.

——— exclusion of—

See DARBHANGA RAJ.

I. L. R. 42 Calc. 582

FINDING OF FACT.

See APPELLATE COURT.

I. L. R. 39 Bom. 386

See PRE-EMPTION.

I. L. R. 37 All. 524

See REMAND I. L. R. 42 Calc. 888

See SPECIFIC RELIEF ACT (I OF 1877), S. 39 I. L. R. 39 Bom. 149

FIRE-ARMS.

——— parts of—

See MISJOINDER OF CHARGES.

I. L. R. 42 Calc. 1153

FIRST CHARGE.

See RATES AND TAXES.

I. L. R. 42 Calc. 625

FISHERY.

— *Right of jalkar or fishery in tidal navigable river in Bengal—River forming new channel not gradually but suddenly—Right of grantee of jalkar to follow the river where the subjacent soil does not belong to his grantor, the Crown, but to a riparian proprietor—Grant of rights by the Crown—Proof of title when no actual grant is in existence—Jalkar in existence from before the permanent settlement—English law of waters—Alluvion—Regulation XI of 1825. The appellants claimed as proprietors of a several jalkar or fishery in certain tidal navigable waters in Eastern Bengal a decree for possession of an exclusive fishery in a portion of a suddenly and newly formed river channel as falling within the upstream and downstream limits of their several fishery, and alleged that the respondents were trespassers when they fished in it. The respondents pleaded their right to fish in a portion of the channel, of which they owned both the bed and the banks, as owners of the subjacent soil. There was no actual grant proved, but the appellants produced documentary evidence which showed the existence of the jalkar as appertaining to their zamindars from before the permanent settlement: Held, that original grants of jalkar prior to the Permanent Settlement are but rarely forthcoming, and resort must be had to secondary evidence of them, or to the inference of a legal origin to be drawn from long user. *Hordas Mal v. Mahomed Joli*, I L. R. 11 Calc. 431, per CARTER, C. J., and the rule in *Fitzwater's Case*, 3 Keble 242, that the evidence of a Government grant of an exclusive fishery in navigable waters ought to be conclusive and clear, followed. Held, in the present case, so far as such evidence can now be expected to be forth*

to the appellants' predecessors in title, or settle with them so as in effect to grant a jalkar right of several fishery in certain of the waters of the Ganges system in this suit: Held, also, (following a numerous body of decisions in the Indian Courts) that it must now be taken as decided in Bengal that the Government grantee of a jalkar right can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the Government owns the soil subjacent to such waters as being the long-established bed, or whether the soil is still in a riparian proprietor as being the site of the river's recent encroachment. The whole series of decisions in Bengal on the subject from 1805 to 1905 reviewed and discussed. The English common law admittedly does not apply to the mainland of India, yet the Indian Courts have in many respects followed the English law of waters; and their Lordships

FISHERY—*concl.*

to the argument under and for guidance to the India; that they would in any case be slow to disturb decisions by which rules have been established for Bengal such as be shown precedent, con. The

of physical conditions is capital. By no analogy can rules applicable to the small, slow running and comparatively unchanging rivers of England be profitably applied to such differing conditions. In the case of alluvion as applied to rights of jalkar, and the argument that the right to follow the river ought to be limited to cases where the river encroachments were gradual, and should not be extended to an irruption as sudden and rapid as was the formation of the new channel in the respondents' lands, the Indian law, doubtless guided by local physical conditions has adopted in Regulation XI of 1825, ss. 1 and 4, a rule varying somewhat from the rule established in England, and the analogy of the English law can hardly be called in aid when Indian legislation has thus established and different rule on the same subject. As to the Indian rule working injustice in that a land owner not only loses the use of his land when the river overflows it, but also the right to fish over his own acres in order that another may unmentionably fish in his place, which cannot occur under the English rule, there is no such proof that one rule is better than the other as would even approach the conclusion that the rule established in India should be retained. *BRINATH MOY v. DISABANDH SEN* (1914) I. L. R. 43 Calc. 489

FISHING LEASE.

for 9 years and for

for damages for wrongful removal of fish from a tank, the defendant's plea was that he had been put in possession of the tank with the right of fishery therein for a period of nine years under an arrangement with his co-sharers and he averred that he had removed the fish under such authorisation: Held, that the arrangement proved was a sufficient answer to the suit, irrespective of any rights the defendant might have as a co-sharer, even if as a lease it was void under the provisions of the Transfer of Property Act. *BRINATH MOY v. KEDAR NATH NEHU* (1915).

19 C. W. I. 22

FITNESS.

of surety—
 See SURETY . I. L. R. 42 Calc. 706

FORCE.

use of—
 See BAILIFF . I. L. R. 42 Calc. 313

FOREIGN-COURT DECREE.

See DECREE . I. L. R. 39 Bom. 34

FOREIGN JUDGMENT.

See CIVIL PROCEDURE CODE (1908), SS. 11 AND 13 . I. L. R. 37 All. 1

FORFEITURE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10.
 I. L. R. 39 Bom. 568

See LESSOR AND LESSEE.
 I. L. R. 38 Mad. 445

See PARDON.
 I. L. R. 42 Calc. 756, 856

of deposit of earnest money—

See CONTRACT, BREACH OF.
 I. L. R. 38 Mad. 801

s. 4 (1)—Order made by Local Government of Delhi
 —Jurisdiction—Delhi Laws Act (XIII of 1912).
 Where an order was made under s. 4 (1) of the Indian Press Act, 1910, by the Local Government of Delhi, directing the forfeiture wherever found of all copies of a newspaper published on a certain date in Delhi, on an application to set aside the order made by a person who had in his possession in Calcutta a particular copy: Held, that this High Court had no jurisdiction to entertain the application. *In re ABUL KALAM AZAD* (1915)
 I. L. R. 42 Calc. 730

FRAUD.

See ASSIGNEE OF MONEY DECREE.
 I. L. R. 38 Mad. 36

See HINDU LAW—ADOPTION.
 I. L. R. 39 Bom. 441

of creditors—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
 I. L. R. 38 Mad. 1076

See MORTGAGE BY MINOR.
 I. L. R. 38 Mad. 1071

1. ————— Decree—Decree
 based on perjured evidence—Suit to set aside—
 Onus of proof—*Res judicata*. Held, that a suit to set aside a decree on the ground that the decree had been obtained by perjured and false evidence is not maintainable: Held, further, that where a decree was impeached on the ground of fraud, the fraud alleged must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the Court in ignorance of the real facts of the case, and the obtaining of the decree

FRAUD—contd.

by that contrivance. *Nand Kumar Howladar v. Ram Jiban Howladar*, I. L. R. 41 Calc. 990, *Munshi Mosuful Huq v. Surendra Nath Ray*, 16 C. W. N. 1002, followed. *Chinnayya v. Ramanna*, I. L. R. 38 Mad. 203, *Baker v. Wadsworth*, 67 L. J. Q. B. D. 301, *Vadala v. Lawes*, L. R. 25 Q. B. D. 310, *Abouloff v. Openheimer & Co.*, L. R. 10 Q. B. D. 295, referred to. *Venkatappa Naik v. Subba Naik*, I. L. R. 29 Mad. 179, dis-sented from. *JANKI KUAR v. LACHMI NARAIN* (1915) . I. L. R. 37 All. 535

2. ————— Fictitious rent-sale—Collusive sale arranged between putnidar and tenure-holder to get rid of under-tenure—Abuse of process—Duty of tenure-holder to protect under-tenure-holders from paramount claims—Transac-tion, a private sale. Where a tenure-holder having offered to sell his interest to the putnidar, the latter agreed to pay the price asked only if the tenure was rid of the interest of subordinate tenure-holders, and it was arranged that the tenure-holder would make default in paying rent, and that the putnidar would sue him for arrears of rent and put up the tenure for sale in execution of the decree and that a person who had no intention of buying the property would be made to bid up to a figure approaching the price settled, which thereupon would be offered by the putnidar, and the sale was effected as arranged: Held, that the transac-tion should be viewed as a private sale which in fact it was, the form only of a Court sale having been gone through and abused with the object of defrauding the under-tenure-holders. A suit by the purchaser putnidar to annul an under-tenure and to recover possession must therefore fail. *UMA CHARAN MANDAL v. MIDNAPORE ZEMIN-DARY Co.* (1914) . 19 C. W. N. 270

3. ————— Fraudulent agree-ment—Collusive decree obtained on such agreement—Fraud unsuccessful—Suit impugning agreement and decree—Defendant prevented from defending suit on the plaintiff's assurance that decree will not be executed against him—Suit to declare decree incapable of execution if lies. The principle that a party to a fraudulent transaction is entitled to relief in a Court of Equity as against the fraud-ulent confederate so long as the fraud contem- plated has not been carried into effect is not inapplicable merely because the party suffers a decree to be passed against him in a fictitious and collusive suit which is only a part of the fraudu-lent scheme. *Akhil Prodhon v. Mammotha Nath*, 18 C. W. N. 1331: s. c. 18 C. L. J. 616, and *Param Singh v. Lalji Mal*, I. L. R. 1 All. 403, followed. Where one of two defendants was prevented from making a proper defence to the suit by the fraudulent assurance of the plaintiff that the decree obtained would not be executed against him: Held, that the defendant was not estopped by the decree from suing for a declaration that the decree was incapable of execution. *Chenvirappa v. Puttappa*, I. L. R. 11 Bom. 708, followed. *RAJAB ALI CHOUDHURY v. HADAYET ALI CHOUDHURY* (1915) . 19 C. W. N. 1151

FRAUD—*concl'd.*

4. ————— *General allegations of fraud in pleading, if should be noticed.* Under the Contract Law of India, as well as by ordinary principles, coercion, undue influence, fraud and misrepresentation (though they may overlap or may be combined) are all separate and separable categories in law. General allegations, however strong, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. The law of India is in no way different from this, and the Judicial Committee regret that the rule is not more strictly observed. *Gunga Narain Gupta v. Tiluckram Choudhury*, L. R. 15 I. A. 119, referred to. *BAL GANGADHAR TILAK v. SHRINIWAS PANDIT* (1915) 19 C. W. N. 729

5. ————— *Suit to set aside a judgment for fraud—Discretionary relief—It has acts constitute fraud—Obtaining decree by deliberate perjury, whether liable to be set aside as fraudulent* A judgment in a previous suit cannot be set aside by a new suit based on an allegation that the decree-holder obtained it by practising a fraud on the Court, in the absence of the judgment debtor, viz., by suppressing certain material evidence in the

Edn. 731 at p 738, which is to the following effect —In order that fraud may be a ground for vacating a judgment, it must be a fraud that is extrinsic or collateral to everything that has been adjudicated upon but not one that has been or must be deemed to have been dealt with by the Court. The power of the Court to set aside a judgment on the ground of fraud is a discretionary one which will be exercised in favour of the petitioner only if he had been free from fraud or any turpitude, or laches, sloth or lack of diligence in protecting his own interests *Quare*: Whether a judgment can be set aside for fraud on the ground that the successful party was guilty of deliberate perjury or suborning perjury English and Indian case law on the subject discussed. Examples of fraud which will vitiate a judgment, given. *CHINNAYYA v. RAMANNA* (1913) I. L. R. 38 Mad. 203

FRAUDULENT TRANSFER.

See TRANSFER OF PROPERTY ACT (IV of 1882), s 33
I. L. R. 39 Bom. 507

G**GARDEN.**

See HOMESTEAD LAND.
I. L. R. 42 Calc. 633

GARNISHEE ORDER.

See DEBTEE . I. L. R. 39 Bom. 80

GENERAL CLAUSES ACT, BOMBAY (BOM. I OF 1904).**s. 3—**

See MAMLATDARS' COURTS' ACT, BOMBAY
(Bom. Act II of 1900), s. 23.
I. L. R. 39 Bom. 552

GIFT.

See MAHOMEDAN LAW—GIFT.
I. L. R. 42 Calc. 361

See MALABAR LAW.
I. L. R. 38 Mad. 79

by husband to wife—

See MALABAR LAW.
I. L. R. 38 Mad. 79

GIFT-OVER.

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

GOODS.

properly in, at the time of capture—

See CONFISCATION
I. L. R. 42 Calc. 334

shipped before war—

See CONFISCATION.
I. L. R. 42 Calc. 334

GOODWILL.

See TRADE MARK.
I. L. R. 42 Calc. 222

GOVERNMENT.

Liability of—

See PENSIONS ACT (XXIII of 1871)
ss 4, 5, 6 . I. L. R. 37 All. 338

nature of—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

right of, to streets, drains, etc.—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

ultra vires order—

See LIMITATION ACT (IX of 1908), s. 4
1. ART 14 . I. L. R. 39 Bom. 494

GOVERNMENT OFFICIALS IN BOMBAY.

See RESOLUTION I. L. R. 38 Bom. 279

GOVERNMENT ORDERS.

See MADRAS IMMIGRATION CLERK ACT (VIII of 1895), s. 1.
I. L. R. 38 Mad. 927

GOVERNOR-GENERAL IN COUNCIL.

powers of—

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

GRANT.

See GRANT BY COURT.
See MINERAL RIGHTS.
I. L. R. 42 Calc. 346

GRANT—contd.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10.

I. L. R. 38 Mad. 867

as inam—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8. I. L. R. 38 Mad. 891

of melvaram—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8. I. L. R. 38 Mad. 891

to wife and minor son—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10. I. L. R. 38 Mad. 867

1. ————— *Conduct of parties, reliance on for ascertaining intention of grantor.* That reliance could not be placed on the conduct of the parties to ascertain the intention of the grantor except in the case of ancient grants where the terms are ambiguous. *CHRISTIAN v. TEKAITNI NARBADDA KOERI* (1914). 19 C. W. N. 796

2. ————— *Construction of grant—Water-cess—Madras Water-cess Act (VII of 1865)—Free grant of water before—No right to impose water-cess thereafter.* If for some consideration or other or even for no consideration a grant was before the passing of Madras Water-cess Act (VII of 1865) made by the Government, of a particular quantity of water or a certain definite share of the water of a tank to a person irrespective of the use he might make of it, the grant is in law a free grant and the Government is not entitled to any kind of payment thereafter for the water under Madras Act VII of 1865. *Maria Susai Mudaliar v. The Secretary of State for India*, 14 Mad. L. J. 350, followed. *Secretary of State for India v. Swami Naratheeswarar*, I. L. R. 34 Mad. 21, distinguished. *VENKATASUBBIAH v. SECRETARY OF STATE FOR INDIA* (1912).

I. L. R. 38 Mad. 424

3. ————— *Grant for Barki service—Resumption of grant—Non-production of grant—Presumption as to right to resume cannot be made—Right of resumption must be proved.* In the Bombay Presidency where Deshgat Vatan lands are granted for the performance of personal services, no presumption can be made that the grantor has the option to determine the services and to resume the lands. If a grantor takes up that position and claims that as his right, he must show either that the terms of the grant give him that right or if the terms of the grant are unknown, that the proved circumstances justify an inference that he has that right. *YELLAVA SAKREPPA v. BHIMAPPA GIREPPA* (1914)

I. L. R. 39 Bom. 68

4. ————— *Grant of land, "besides poramboke," construction of—Padugai lands in Trichinopoly and Tanjore taluks, ownership of—'Padugai' meaning of.* A grant of land by the Government acknowledging the grantee's title to a whole village consisting of certain specified area 'besides poramboke' gives the grantee

GRANT—concl'd.

a right to all the unassessed waste in the village such as waste or padugai land, i.e., land between a river-bed and the high flood bank of the river though it may not operate to give communal property such as burying-grounds, temple-sites, etc., to the grantee. *Narayanasami v. Kannappa*, Second Appeal No. 1445 of 1910, and *Secretary of State v. Kannapallee Venkataratnammah*, 23 Mad. L. J. 109, referred to. Padugai land in Trichinopoly and Tanjore taluks mean land on the lower level bank breadth of the river between the edge of the sandy stream bed and the high flood level bank. *SADASIVA AYYAR, J.* The grant of poramboke does not operate to give the grantee the bed of the river. Meaning of the word 'Poramboke,' considered. *SECRETARY OF STATE v. RAGHUNATHA TATHACHARIAR* (1912).

I. L. R. 38 Mad. 108

GRANT BY CROWN.

See FISHERY. I. L. R. 42 Calc. 489

GRANTEES.

estate of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10. I. L. R. 38 Mad. 867

GUARDIAN.

See GUARDIAN FOR MARRIAGE.

See HINDU LAW—GUARDIAN.

alienation by—

See HINDU LAW—GUARDIAN.

I. L. R. 38 Mad. 1125

application by—

See GUARDIANS AND WARDS ACT (VIII OF 1890), s. 25.

I. L. R. 39 Bom. 438

1. ————— *Minor—Hindu Widow—Guardians and Wards Act (VIII of 1890), s. 7, sub-s. (3)—Appointment of guardian to a minor widow—Will—Whether before probate taken out, will may be considered in connection with appointment of guardian to a minor.* In an application for the appointment of a guardian of a minor, the Court is bound to consider a will, although probate has not been granted. The fact that there is a contest as to the validity of the will may induce the Court to exercise its discretion one way or the other, but it is not open to the Court to say it will refuse to take notice of the will. *Sayad Shahu v. Hapija Begam*, I. L. R. 17 Bom. 560, *Chinnasami v. Hariharabadra*, I. L. R. 16 Mad. 380, and *Pathan Ali Khan Badlukhan v. Bai Panibai*, I. L. R. 19 Bom. 332, referred to. *SARALA SUNDARI DEBI v. HAZARI DAS DEBI* (1915). I. L. R. 42 Calc. 953

2. ————— *Hindu father entrusting sons for custody and education in England to another person who defrays expense of their maintenance and education—Revocation of such authority and demand for sons to be restored to his custody—Suit to enforce demand in District Court—Questions to be determined in such a suit—Juris-*

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dition of the District Court—Guardians and Wards Act (VIII of 1890), s. 2—'Ordinarily resident,' meaning of—Suit, not the appropriate procedure—Transfer of suit from the District Court to the High Court under clause 13 of the Letters Patent, 1865—Powers of the High Court in dealing with the suits so transferred—Mandatory order of the kind asked for, not to be made—What a Court of competent jurisdiction in India could do under the circumstances—Order declaring a guardian, when to be made—Guardians and Wards Act (VIII of 1890), s. 19—Order declaring a guardian during respondent's life, propriety of—Among Hindus, as in England the father is the natural guardian of

entrust the custody and education of his children to another, but the authority he thus confers is essentially a revocable authority, and if the welfare of his children require it, he can, notwithstanding any contract to the contrary, take such custody and education once more into his own hands. If however the authority has been acted upon in such a way as in the opinion of the Court exercising the jurisdiction of the Crown over infants to create associations or give rise to expectations on the part of the infants which it would be undesirable in their interests to disturb or disappoint, such Court will interfere to prevent its revocation. *Lyons v. Ellenkin*, (1821) Jac 245 followed. The plaintiff (respondent) a Brahman residing at Madras, and having only a small income, had been for many years a member of the Theosophical Society of which the defendant (appellant) was President. He had two sons born respectively on 11th May 1893 and 30th May 1898. In 1910 the appellant offered to take charge of his sons and defray the expense of their maintenance and education in England and at the University of Oxford. The respondent accepted that offer, and by a letter to the appellant, dated 6th March 1910, authorised her to take charge and be guardian of his sons, who were thereafter in her custody and were eventually in February 1912 taken by her to England where she left them after making arrangements for giving them a course of tuition such as would enable them to enter the University. For reasons to which it is unnecessary to refer, the respondent, on 11th May 1912, cancelled his previous letter of 6th June 1910 and demanded that his sons should be restored to his custody, and on the appellant (then in India) refusing to comply with his demand he instituted in the District Court of Chingleput the present suit which was transferred to the High Court at Madras under clause 13 of the Letters Patent, 1865, and in the absence of the sons a decree was made and affirmed on appeal declaring that they were wards of Court, that the respondent was guardian of their persons, and ordering the appellant to make over custody of them to the respondent. *Hild*, that the suit was entirely

GUARDIAN—contd.

misconceived, that the respondent remained guardian of his sons notwithstanding that he had substituted the appellant in his place, that letter of 6th June 1910 has a revocable authority and that the real questions for decision were whether, in the events that had happened, the respondent was at liberty to revoke the authority and was

jurisdiction of the Crown over infants and in their presence that the District Court had no jurisdiction over them except such as was conferred by the Guardians and Wards Act (VIII of 1890) which was confined to infants ordinarily resident in the district and as the infants who had months previously left India with a view to being educated in England and going to the University of Oxford, could not be said to be ordinarily resident in the district of Chingleput, that Court had no jurisdiction in the matter, that a suit *inter partes* is not the form of procedure prescribed by that Act for proceedings in a District Court, touching the guardianship of infants, that the powers of the High Court in dealing with suits transferred to it under clause 13 of the Letters Patent, 1865, would seem to be confined to the powers which but for the transfer, might have been exercised by the District Court, that a mandatory order directing the defendants to take possession of the infants in England and bring them to India was one which considering their age could not be enforced if they refused to return to India and ought not to have been made, that the most which a Court of competent jurisdiction could do under the circumstances such as existed in the present case was to order the appellant to concur with the respondent as the infants' guardian in taking proceedings in England to regain the custody and control of his sons. *Hild*, further, that with respect to the order declaring the infants wards of the Court and appointing the respondent as their guardian with the District Court could not have made in a suit which it was alleged that the High Court could in its general jurisdiction make, that whatever may have been the jurisdiction of the High Court, to declare infants wards of the Court, an order declaring a guardian could only be made if the interests of the infants required it, and that an order made when the infants were not before the Court and without adequately considering them their interest could not be supported, that no order declaring a guardian could be made of s. 19 of the Guardians and Wards Act, 1890, be made during respondent's life unless in the opinion of the Court, he was unfit to be their guardian. Since the admission of the appeal the infants had been allowed to intercede, and they stated through counsel that they did not wish to return to India and abandon the chances of a University

DIAN—concl'd.

tion in England. The appeal was allowed, the suit dismissed without prejudice to any application the respondent might think fit to make to High Court in England touching the guardianship, custody and maintenance of his children.

I. L. R. 38 Mad. 807

GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 47 AND 50.

I. L. R. 38 Mad. 1078

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13; O. XXXII, R. 3

I. L. R. 37 All. 179

GUARDIAN FOR MARRIAGE.

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 42 Calc. 351

GUARDIANS AND WARDS ACT (VIII OF 1890).

ss. 4(2), 24, 25, 28, 41, 47—

See MAHOMEDAN LAW—MARRIAGE

I. L. R. 42 Calc. 351

s. 7(3)—

See GUARDIAN. **I. L. R. 42 Calc. 953**

ss. 9 and 19—

See GUARDIAN. **I. L. R. 38 Mad. 807**

ss. 12, 24, 25—Minor—Grant of certificate—Fresh application for custody of minor—Jurisdiction—No regular suit maintainable. The mother of a minor girl applied to be appointed her guardian. The girl was alleged to have been taken away by her elder sister but no action under s. 12 of Act VIII of 1890 was asked for. She got a certificate of guardianship issued to her. Later she applied asking for possession of the person of her daughter: *Held*, that she was entitled to do so. She was charged with the custody of the ward and could ask the Court to assist her to perform the duties imposed upon her by s. 24 of the Act. The District Judge was empowered to enforce all the provisions contained in the Act for the benefit of the minor. Further, that no separate suit could have been brought for the purpose. *Sham Lal v. Bindo*, **I. L. R. 26 All. 594**, followed. *Quære*: Whether an appeal lay from the order of the Judge rejecting the application. **UTMA KUAR v. BHAGWANTA KUAR** (1915) **I. L. R. 37 All. 515**

s. 25—Custody of Minor—Application by guardian—Guardian—need not be a certificated guardian. An application under s. 25 of the Guardians and Wards Act (VIII of 1890) for the custody of a minor can be made by a guardian, who need not be a certificated guardian. **DAYABHAI RAGHUNATHDAS v. BAI PARVATI** (1915) **I. L. R. 39 Bom. 438**

ss. 39, 47, 48—Revocation of an order by guardian on the ground that alleged

GUARDIANS AND WARDS ACT (VIII OF 1890)
—concl'd.

s. 39—concl'd.

minor attained majority before appointment of guardian, if an order under s. 39 and if appealable—S. 39 if exhaustive—Jurisdiction of District Judge to deal with matters of which cognizance may be required in the interests of justice—Inherent jurisdiction of Courts to recall orders obtained by suppression or misrepresentation of facts. On the application of the appellant, she was appointed by the District Judge guardian of the person and property of the respondent, her daughter-in-law who subsequently applied to the District Judge for revocation of his order, on the ground that she had attained majority before the order appointing the appellant as her guardian was made. The District Judge took evidence and finding that the respondent's allegation was true revoked his previous order. Against this order of revocation, the appellant preferred an appeal to the High Court: *Held*, that s. 39 of the Guardians and Wards Act specifies the circumstances under which the Court may remove a guardian appointed under the statute, and the order in question was not made under cl. (9) of s. 47: *Held*, was not appealable under cl. (9) of s. 47: *Held*, (as to the contention that as there was no section of the Guardians and Wards Act applicable in terms to the present matter, the District Judge was incompetent to enquire into the allegations of the respondent), that a Court which exercises powers inherent jurisdiction to deal with matters brought under the Guardians and Wards Act has ample in-

herent jurisdiction to deal with matters brought before it, of which cognizance may be required in the interest of justice and the matter in question. Jurisdiction to deal with the matter in question. S. 151, Civil Procedure Code, which provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the ends of justice or to prevent abuse of the process of the Court, does not formulate a new doctrine, but merely furnishes legislative recognition of a well-established principle which is applicable quite as much to Courts called upon to deal with matters under the Guardians and Wards Act as to ordinary Civil Courts. If an order has been obtained from the Court by a suppression of facts, if the Court has been overreached and has been induced to assume jurisdiction over a matter in which, upon true state of facts, it does not possess jurisdiction, the Court is competent to recall the order obtained from it by suppression or misrepresentation of facts. That s. 48 was not a bar to present proceedings and the District Judge exercise of his inherent power. **RASHMONTI v. GANODA SUNDARI DASSI** (1914)

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GUJARAT TALUQDARS ACT (BOM. 1883).

See KASBATIS.

I. L. R. 39 B.

HIGH COURT RULES (ORIGINAL SIDE).

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I. L. R. 39 Bom. 604

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See COSTS. I. L. R. 39 Bom. 383

HIGH COURTS ACT (24 & 25 VICT. C. 104).

ss. 2, 9, and 13—*Amended Letters Patent, clauses 11 and 26—High Court Rules, Original Side, Rules 62—High Court Rules, Appellate Side Rules 1 and 5—Single Judge sitting on the Original Side of the High Court—Power to stay suit pending before a Subordinate Judge's Court in the mofussil.* It is not competent to a single Judge of the Bombay High Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in the mofussil, unless authorised so to do by rules. *Per MACLEOD J.*—A single Judge sitting on the Original Side of the High Court is competent to restrain the parties in a suit before him from proceeding with a suit in a Subordinate Judge's Court in the mofussil, and so in effect stay the proceedings. *NARAYAN VITHAL SAMANT v. JANKIBAI* (1915) . I. L. R. 39 Bom. 604.

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HINDU LAW.

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HINDU LAW—ADOPTION.

1. ————— Adoption—Half-brother—*Mitakshara*. The adoption of a half-brother is not invalid under Hindu Law. *GAJANAN BAL-KRISHNA v. KASHINATH NARAYAN* (1915)

I. L. R. 39 Bom. 410

2. ————— Adoption—Validity of adoption—Non-performance of ceremony of *datta homam*—Will giving power to widow to adopt with consent of trustees where one declines to act—Omission to follow provisions of s. 145 of Evidence Act as to using documents to contradict witnesses—Inferences drawn from documents so used, and basing decision on them to prejudice of witnesses—General allegations of undue influence and fraud without specific issues or pleas. On this appeal, their Lordships of the Judicial Committee, in a suit to establish the validity of an adoption. *Held*, (reversing the decision of the High Court), that on the evidence and under the circumstances of the case the adoption was valid. Where the boy to be adopted is of the same *gotra* as the adoptive father the performance of the ceremony of *datta homam* is not essential to the validity of the adoption among Maratha Brahmins in Bombay. *Valubai v. Govind Kashinath*, I. L. R. 24 Bom. 218, approved, as being based not on the particular degree of relationship, but upon the broad ground of the identity of *gotra*. A Hindu testator by his will appointed five trustees of his property and gave power to his widow to adopt a son with their consent and advice; and one of the trustees declined to act. *Held*, that the consent of the declining trustee was not necessary, and the adoption made with the consent of the other four trustees was valid. It is a general salutary, and intelligible rule, and one substantially embodied in s. 145 of the Evidence Act (I of 1872) that if a witness is under cross-examination on oath, he should be given the opportunity, if documents are to be used against him, to tender his explanation and clear up the particular point of ambiguity or dispute: and the duty of enforcing such a rule is clear, especially where a witness' reputation or character is at stake. In this case, where the general principle of this rule and the specific provisions of s. 145 had not been followed but documents had been used for the purpose of contradicting witnesses without calling their attention to the portions of the documents so used, their Lordships were of opinion that the decision of the High Court on the evidence amounted to an inferential verdict of perjury against the witnesses which was not justified. *Semble*: Where coercion, undue influence, fraud and misrepresentation are

HINDU LAW—ADOPTION—contd.

set up as rendering a transaction invalid, each one should be specifically pleaded, and a definite issue upon it settled. In attacking an adoption an issue, "whether the plaintiff is a validly adopted son," is not one on which any of the above grounds should be permitted to be raised by general allegations. *Wallisford v. Mutual Society, L. R. 5 App. Cas. 685*, per Lord Selborne; and *Ganga Narain Gupta v. Tiluckram Choudhry, 1 L. R. 15 Cal. 533; L. R. 15 I. A. 119*, referred to as to the defence of fraud. **BAL GANGADAR TILAK v. SHRINIVAS PANDIT (1915)**

I. L. R. 39 Bom. 441

3. Adoption—Effect of invalid adoption—Invalidly adopted son not entitled to maintenance—Declaration in writing that the declarant will give certain lands as maintenance—Formal agreement not executed—Grantor cannot be sued on the declaration—Incomplete contract Under Hindu Law, a boy whose adoption has been found to be invalid has no right to be maintained out of the estate of the adopted

estate. The Collector persuaded the present Thakor (defendant) to settle the matter. Accordingly, the defendant made a declaration in writing that he would give the Kankapur wasta by way of maintenance to the plaintiff and his direct lineal heirs. The defendant did not execute any formal deed to convey the lands. The plaintiff sued to recover the Kankapur wasta from the defendant on the strength of the declaration. *Held*, that the defendant was not bound by the declaration, which marked only a stage in the negotiations, which, unless completed, could be broken off at any time by either side. **DAST SINGHJI v. RAISINGHJI (1915)**

I. L. R. 39 Bom. 528

4. Adoption—Authority to adopt, construction of—Extrinsic evidence, admissibility of—Successive adoptions—Limits for the exercise of the power to adopt—First adopted son, death of—His widow alive—Second adoption by widow of previous owner, validity of—Impartible zamindari, how far joint family property—Vesting of property in a coparcener, meaning of—Divesting of property by adoption—Rule as to adoption to last male holder—Applicability of rule to ordinary coparcenary and to impartible zamindari. A, the holder of an impartible zamindari, died in 1868 without issue, leaving a widow K. Prior to his death, he executed a document authorising her to adopt a son to him. On his death his brother R succeeded to the estate. Subsequently in 1870, K adopted B who recovered the zamindari from R by suit and died in 1900 without issue leaving a widow R.M. On the death of B, the son of R succeeded to the zamindari but died fifteen days after his accession, the first and second defendants were his sons. In 1907, K purporting to act under the power given by her husband,

HINDU LAW—ADOPTION—contd.

adopted the plaintiff as a son to her husband, while R.M., the widow of B was alive. The plaintiff sued to recover the zamindari from the defendants. The latter pleaded that the power to adopt given to K by A (her husband), did not authorise her to make a second adoption, that the existence of R.M. was a bar to the exercise of the power even if it was not exhausted by the first adoption and that the adoption, not having been made to the last male holder, was invalid. *Held*, that the power to adopt given by A to K was wide enough to enable her to make a second adoption, but that the power was not exercisable by reason of the fact that R.M. (if a widow) was alive when the second adoption was made by

her, **22 Mad. L. J. 55**, referred to *PER SESHAGIRI AYYAR, J.*—The canon of construction regarding powers to adopt is not different from that of ordinary testamentary dispositions the intention of the testator has to be gathered from the language employed by him and from the circumstances

make a second adoption will not result in creating a new line of succession but will only transfer the estate from one intermediate owner to another with the prospect of the latter being eventually directed, the limit of the power to adopt should be held to have been reached. An estate taken by survivorship by a member of a joint Hindu family is a conditional estate subject to defeasance on the coming into existence by adoption or otherwise, of a new member into the coparcenary; the rule of law that, in order that an estate once vested may be divested, the adoption should be made to the last male holder, is not applicable to coparcenary property, and an impartible zamindari is joint family property subject to an exception. **MAHAYA MOHANA v. PRATAPMOHANA (1914)**

I. L. R. 33 Mad. 1105

5. Adoption by widow acting with her deceased husband's authority, if her brother's son—Authority to adopt a particular boy whom her husband could and would have adopted had he lived—Rejection of the extension by Nanda Pandit in *Shivaji Manappa v. Adappa* to females of rule of Hindu Law against adoption of one whose mother the adopter could not have legally married. The adoption by a Hindu widow acting in accordance with authority given her by her deceased husband is an adoption not to be held void to her husband, and is therefore not, according to Hindu Law, invalid by reason of the adoption by her of her brother's son. *Jai Singh Palsania v. Jyoti Palsania, 1 L. R. 27 All. 117, affirmed in Ramayya, 1 L. R. 3 Mad. 15, and Laxmi Narayan v. Channal, 1 L. R. 22 Lam. 212, approved in*

HINDU LAW—ADOPTION—concl'd.

The gloss of Nanda Pandit in the *Dattaka Mimansa* purporting to extend to adoption by females the rule of Hindu Law that no one can be adopted as a son whose mother the adopter could not have legally married, rejected as being an extension not based upon the authority of the *Smritis* or institutes of sages, and not being shown to have been accepted as the law of India, so far as adoptions by widows to their deceased husbands are concerned. In the present case the authority of the husband to the widow was a specific authority to her to adopt a particular boy whom she did adopt and whom he could and presumably would, have adopted had he lived. *PURTU LAL v. PARBATI KUNWAR* (1915)

I. L. R. 37 All. 359

HINDU LAW—ALIENATION.

1. ———— Alienation by widow—*Mortgages executed with alleged consent of reversioners—Nature of proof required of consent which must be established by positive evidence—Absence of proof of legal necessity—Presumption afforded by consent of reversioner.* In this appeal which arose out of suits to recover property mortgaged by a Hindu widow it was held (affirming the decisions of the Courts in India), that the part taken by the reversioners with respect to the mortgages in question did not, under the circumstances, amount to a consent to bind their interests. When a "stringent equity" arising out of an alleged consent by reversioners is sought to be enforced against them, such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interests; and that such consent should not be inferred from ambiguous acts, or be supported by dubious oral testimony such as appeared to have been relied upon in this case. *Jiwan Singh v. Misri Lal*, I. L. R. 18 All. 146; I. L. R. 23 I. A. 1, per LORD HOBHOUSE, referred to. *HARI KISHEN BHAGAT v. KASHI PERSHAD SINGH* (1914). . . . I. L. R. 42 Calc. 876

2. ———— Alienation by widow—*Construction of deed of sale executed by widow—Whether it conveyed an absolute interest in the property or only a limited interest—Legal necessity—Evidence of intention of parties—Construction of deeds executed by natives of India—Recitals in deed as showing necessity and intention of executants.* In this appeal their Lordships of the Judicial Committee held (reversing the decree of the High Court and restoring that of the Subordinate Judge) that on the construction of a deed of sale executed by a Hindu widow of property held by her as heir of her husband in favour of the appellant, she conveyed her absolute interest in such property, and not only the limited interest of a Hindu widow. Recitals to the effect, (a) that the husband did not leave property the produce of which was sufficient to meet her necessary expenses, (b) that she had been obliged to borrow money to provide the ordinary necessities of life, (c) that there were ancestral debts still unpaid, and creditors pressing

HINDU LAW—ALIENATION—cont'd.

for payment, and (d) that the only way to discharge them was to sell a portion of the property of her deceased husband, recitals which were necessary if the executant were disposing of her absolute interest, but serving no purpose if the object was to convey merely the limited interest of a widow, were held to show that the circumstances were such as to give her power to dispose of her absolute interest, and from which the inference could reasonably be drawn that it was her intention so to dispose of it. Referring to the case of *Hunooman Persaud Pandey v. Babooee Munraj Koonwerree*, 6 Moo. I. A. 393, 412, as to the liberal construction it was necessary to put upon deeds executed by natives of India, their Lordships were of opinion that an examination in detail of the provisions of the deed in this case left no doubt in their minds that all the parties to it meant that the absolute interest in the property should be conveyed to the purchaser, and though that it had by the deed been effectually conveyed to him. That interest might well be construed as meaning the right to and interest in the property which the widow had, in the particular circumstances of the case, powers, for the purpose indicated, to sell and dispose of, that is, the absolute interest, and not (as held by the High Court) as merely meaning the right and interest which a widow normally takes in the immoveable property which her husband owned at his death and leaves after him. Any other construction their Lordships thought would plainly defeat the object and intention of the contracting parties. *VASONJI MORARJI v. CHANDA BIBI* (1915)

I. L. R. 37 All. 369

3. ———— Contract by father to sell family lands—*Suit for specific performance against father—Son added subsequently as defendant—No necessity for contract—Contract not binding on son—Plaintiff's right to conveyance from father of his share only—Partial performance, meaning of—Specific Relief Act (I of 1877), s. 15—Contract by a co-parcener to sell his share in family property, and contract to sell specific family property, distinction between.* The plaintiff sued for specific performance of a contract or sale of certain lands and for possession. The contract was entered into by the first defendant, the undivided father of the second defendant who was subsequently added as a party to the suit. The first defendant pleaded that the contract was vitiated by undue influence and was a hard bargain that ought not to be enforced against him. The second defendant pleaded that the contract was entered into by the first without any legal necessity and was not enforceable in law. It was found that there was no undue influence or hard bargain and that there was no necessity to enter into the contract. The plaintiff offered to pay the full consideration for a conveyance of the lands which were the separate property of the first defendant and of his interest in the family lands. Held, that the plaintiff was not entitled to a decree for specific performance of the contract against the

HINDU LAW—ALIENATION—concl.

first defendant or the second defendant. *Per* SANKARAN NAIR, J.—A person is entitled to specific performance of a contract by a member of a Hindu family to sell his share of the family property. If a junior member of a Hindu family agrees to sell any specific property belonging to his family, a decree cannot be passed against him to

Kosura

R. 26

Reddi

Reddi

33 Mac

Sastrul

Nanjay

L. T.

Venka.

referred to. *Dubba* . . .

I. L. R. 38 Mad. 1187

HINDU LAW—BANDHUS.

Mitakshara—Bandhu
—Grandfather's great grandson's daughter's son not a bandhu under the Mitakshara law. *Held*, that for bandhu relationship to exist it is essential that the person claiming to be bandhu and the last male owner must have been sapindas of each other. The rule of sapinda relationship under the Mitakshara law extends to seven degrees on the father's side and five degrees on the mother's side including the last owner. Therefore a grandfather's great grandson's daughter's son is not a bandhu under the Mitakshara law. *Srin SARAI v. SARASWATI*, (1915)

I. L. R. 37 All. 583

HINDU LAW—CUSTOM.

Custom—Babuana and
Schag grants—Proof of Custom—Custom excluding females from succession in Darbhanga Raj family estate—Custom of exclusion not only from succession to Raj, but extending to succession in collateral branches of family—Custom effective notwithstanding partition had taken place in family branch. In a suit by one of two brothers in a junior branch of the family of the Darbhanga Raj estate governed by the rule of male lineal

son, not only to the Raj house, but also to collateral branches of the family. *Held*, that there was on the evidence a valid custom established in the junior branch of the family to which the parties belonged that widows did not inherit Babuana properties, and that the succession in the case of schag grants was governed by the same custom as governed the succession in the case of Babuana grants. The custom applied in this case notwithstanding a separation and partition of the property which had been effected between the plaintiff and his brother; and consequently on his brother's death the plaintiff became entitled to such of the estate of his deceased

brother as consisted of Babuana and schag properties, together with accretions which had been made to the former property. *Held*, also, that the custom was strongly supported by instances in the family of widows, who would otherwise have been entitled to a Hindu widow's interest, having been excluded from, or not having claimed possession of property on the death of the husband; and that the custom being proved to be well established could not, under the circumstances, be defeated by the fact that in one instance as the evidence showed, it was not enforced. Words used in the Babuana and schag grants, "auras putra potradis," were held not to be words of general inheritance which would include female as well as male heirs, but words of limitation consistent with the custom which excluded females from succession under Babuana and schag grants which could not be made under the ordinary Hindu (in this case the Mithila) law. *Ram Lal Mookerjee v. Secretary of State for India*, I. L. R. 7 Cal. 304, L. R. 8 I. L. 46. *EXRADESHWAR SINGH v. JAYASHWARI BANUJAN* (1914) . . . I. L. R. 42 Cal. 552

HINDU LAW—CUSTOM—concl.

Debt—Widow—Duty
of widow to pay her husband's debts even though time barred—Widow not bound to pay debts repudiated by her husband in his life time. Under Hindu Law, a widow is under a pious obligation to pay her deceased husband's debts, even though they may be time barred; but she is not bound to pay debts which her deceased husband had repudiated before his death. *BUAGWAT BHASKAR v. NIVRATTI SANKARAN* (1914)

HINDU LAW—DEBT.

See HINDU LAW—SCRETY DEBT.

I. L. R. 39 Bom. 113

HINDU LAW—ENDOWMENT.

*Election of Mahants of temple—Sthal or diocese of deceased mahant—Election by a majority of the dasnam thik (ten classes of mendicants) assembled for purpose of such election—Separate election by faction of dasnam thik. An election of a mahant of a temple by the dasnam thik (the ten classes of mendicants), in order to be a valid and effectual election must be made by a majority of the dasnam thik assembled for that purpose. A separate election by a faction of the dasnam thik is not a valid and effectual election. In this case which related to the election of a mahant to a temple at Haridwar, called Akhara Bala Narayan Nath, both the appellant (plaintiff) and respondent (defendant in possession of the math property) claimed to have been duly elected on the same day, the 24th of February, 1903 (being the Dussehra, the 13th day ceremony after the death of the late mahant) their Lordships of the Judicial Committee (affirming the decision of the High Court, which had referred that of the subordinate Judge), *Held* that on the evidence and under the circumstances of the case, the appellant, who*

HINDU LAW—ENDOWMENT—*contd.*

claimed to be the *sadhak* (disciple) of the deceased mahant, had failed to prove that he had been duly elected mahant of the temple. On the other hand there was large body of evidence in support of the respondent (the *sadhak* of a former mahant) whose election and also the bhandara or feast usual on the occasion had taken place within the temple which was customary, whereas the election of, and the feast given by, the appellant took place outside the temple; that a majority of the persons present at the election of the respondent who were qualified to elect a mahant voted in favour of the respondent; that in point of numbers and influence the respondent received more support than the appellant; and that there was no attempt on the part of the respondent to conceal (as the appellant alleged he had done) the arrangements he had made for the occasion. As it had not been shown that these points had been wrongly decided by the High Court, their Lordships dismissed the appeal. LAHAR PURI v. PURAN NATH (1915) . I. L. R. 37 All. 298

2. ————— Religious endowments—Shebait—Nature of debutter grants, where grantee is to enjoy properties from generation to generation on performance of sheba of the goddess—Permanent leases by grantee, validity of—Civil Procedure Code (Act V of 1908), s. 99—Ambiguity—Evidence. In the construction of ancient grants and deeds, evidence is admissible as to the manner in which the thing granted has always been possessed and used, for so the parties thereto must be supposed to have intended. *Weld v. Hornby*, 7 East 197; 8 R. R. 608. *Rex v. Osbourne*, 4 East 32, followed. The Court may call in aid acts under the deed as a clue to the intention. *De v. Ries*, 8 Bing. 181, followed. This principle does not apply unless there is an ambiguity. *Attorney-General v. The Corporation of Rochester*, 5 DeG. M. & G. 382, followed. Consequently, while in a case of ambiguity the Court will uphold that construction of a deed which justifies a long usage as to the application of trust funds, the Court will not, where there is no ambiguity, accept an erroneous interpretation though consistent with usage, so as to sanction a manifest breach of trust. *Drummond v. Attorney-General*, 2 H. L. C. 337, followed. If there is a deed which says, according to its true construction, one thing you cannot say that the deed means something else, merely because the parties have gone on for a long time so understanding it. *Sadler v. Biggs*, 4 H. L. C. 435, followed. Where two ancient debutter grants by one of the Maharajas of Pachete were held to be ambiguous, the properties having been given to the grantee who was to enjoy them from generation to generation on performance of the sheba of the goddess, and in 1829 the successors of the grantee gave two permanent leases to the predecessors in interest of the plaintiffs: Held, that in those circumstances the Court might determine the true character of the endowment from the manner in which the dedicated properties had been held and enjoyed.

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That the properties in dispute were not absolute debutter properties of the goddess, but were the personal properties of the grantees subject to the charge of the worship of the goddess. *Ganga v. Brindaban*, 3 W. R. 142, *Madan v. Kamal*, 8 W. R. 42, referred to. That the permanent leases had become indefeasible by lapse of time. *Jagamba Goswami v. Ram Chandra Goswami*, I. L. R. 31 Cal. 314, *Damodar Das v. Lakhani Das*, I. L. R. 37 Cal. 885; L. R. 37 I. A. 147, as explained in the case of *Madhu Sudan Mandal v. Radhika Prosad Das*, 16 C. L. J. 349, followed. KULADA PROSAD DEGHORIA v. KALI DAS NAIK (1914) I. L. R. 42 Cal. 536

HINDU LAW—GUARDIAN.

Guardian of a minor's person and property—Natural guardians, who are—Rights of parents, elder brother and direct male and female ancestors—Paternal aunt, not a natural guardian—King's rights, paramount—Recourse to Court, necessary, if no natural guardian alive—Alienation by de facto guardian—Setting aside, if necessary—Suit or possession—Limitation Act (IX of 1908), Art. 44 or 144, applicability of. Under the Hindu law, nobody else than the father and the mother of a minor (with probable exceptions in favour of the elder brother and the direct male and female ancestors) is entitled as a matter of natural right to be and to act as a guardian of a minor's person and property; consequently a paternal aunt is not a natural guardian of a minor. Where there is no natural guardian alive, recourse must be had to the Court as representing the rights of the King which are paramount to even the rights of the parents, for the appointment of a guardian. Alienations without necessity, made by a de facto guardian, need not be set aside. Article 44 of the Limitation Act (IX of 1908) does not apply to alienations by unauthorised guardians THAYAMMAL v. KUPPANNA KOUNDAN (1914) I. L. R. 38 Mad. 1125

HINDU LAW—HUSBAND AND WIFE.

Acquisition of property by husband and wife—Joint-trade—Property, joint—Wife's interest—Stridhanam—Power of disposition—Death of wife—No survivorship to husband—Devolution on her heirs—Suit in ejectment—Decree for joint possession, if, can be given. Where certain properties were acquired with the profits earned by a husband and his wife (who were Hindus) in a trade which was carried on by both of them: Held, that the properties were under the Hindu law the joint properties of the husband and the wife, and her interest therein was her stridhanam which on her death did not survive to her husband but devolved on the heirs to her stridhanam property. Property acquired by a woman by her own exertions during coverture is her own property which she is entitled to hold independently of her husband and it devolves on her heirs on her death. Though the suit be one in ejectment, a decree for joint possession may be passed in favour of the plaintiff. MUTHU

HINDU LAW—HUSBAND AND WIFE—concl.

RAMAKRISHNA NAICKEN v. MARIMUTHU GOUDAN
(1914) I. L. R. 38 Mad. 1036

HINDU LAW—INHERITANCE.

See MOKUNDA LAL CHAKRABARTY v. MONI DEB
19 C W. N. 473

1. *Inheritance—Illegitimate children, right of—Prostitution, not destroying kinship by blood—Mitakshara—Daughters, meaning legitimate daughters—Except in*

stitution does not sever the tie of kinship by blood and the category are allowed

India the right of succession to the property acquired by their mothers. The word daughters in the rule of the Mitakshara which allows daughters to succeed to their parents' property in certain cases means only legitimate daughters. MEENAKSHI v. MONTANDI PANIKKAN (1914)

I. L. R. 38 Mad. 1144

2. *Inheritance—Leprosy, anaesthetic, not a ground of exclusion from—Incurability, not a safe test—Grounds of exclusion in texts, some obsolete—Under the Hindu Law a person suffering from the anaesthetic form of leprosy though considered incurable by medical men, is not disentitled to inherit. Obiter—Both the texts of Hindu Law texts and the decided cases fully establish that it is only the agonizing, sanious or ulcerous type of leprosy that is a disqualification to disinherit. Deformity and unsuitability for social intercourse arising from the virulent and disgusting nature of the disease would appear to be what has been accepted in both the texts and the decisions as the most satisfactory test. Most of the decisions which have excluded lepers deal only with right to partition. Janardhan Pandurang v. Gopal Pandurang 5 Bom. H.C.R. (4 C.J.) 115 (anulur Ramalal I. L. R. 1 Bom. 554 Rangayya Chetti v. Thani Lachalla Mudali I. L. R. 13 Mad. 74 and Hela Das v. Durga Das Mandal, 4 C.L.J. 3-3 distinguished. Ranchod v. Ajadai, 9 Bom. L. R. 1149, referred to. Many of the grounds of exclusion referred to in the texts would not now be enforced by the Courts and are practically obsolete. HAYABOHANA PATHAN v. SUBBARAYA THEVAR (1913) I. L. R. 38 Mad. 250*

3. *Inheritance—Mitakshara—Son's share—Great grandson of grandfather of deceased male owner—Grandson of great-grandfather of deceased—"Pars" in text as son of—Legal and collateral descendants—Legal*

HINDU LAW—INHERITANCE—concl.

relationship or propinquity among gadyas—Test is capacity to offer oblations—Introducing into the texts on the opinion of another Judge in a party to the judgment—Practice not approved—On this appeal, in which the question for decision related to the order of succession under the Mitakshara, as expounded in the Benares school of Hindu law, among the collateral kindred belonging to the same parental stock as the last male owner, who died leaving no male issue held (affirming the decisions of the Courts in India) that the respondent (defendant) as the great grandson of the grandfather of the deceased and the grandson of his paternal uncle was the preferential heir as against the appellant (plaintiff) who was the grandson of the deceased a great grandfather. The word *putra* which when used in relation to the last owner signifies and includes son, grandson and great grandson, thus including three degrees in the direct line of descent is not to be construed in a literal and restricted sense when used in connexion with collateral relatives such as brother, uncle or grand-uncle. The following cases were referred to and discussed—*Rutheputty Dutt Ila v. Rajwade Narain Iar*, 2 Moo 1 4 132 153 *Bhaya Ram Singh v. Bhaya Ugur Singh* 13 Moo 1 4 373 *Kureira Chand Gurnia v. Oudung Gurnia* 6 H. R. 158 *Kalan Rai v. Ram Chander* 1 L. R. 24 All. 158 *Ruchais v. Kalingappa*, 1 L. R. 10 Ben. 716 *Laxmari Bhaitar v. Rangaraya Bhaitar* 1 L. R. 2 Mud. 202 *Suryaya Bhalla v. Lalabhai Narainam* 1 L. R. 5 Mud. 291, and *Chinnasami Pillai v. Anju Pillai*, 1 L. R. 35 Mad. 152 and the last two cases were disented from. The respondent was also entitled to succeed on the ground that he admittedly conferred greater benefit on the deceased by the offering etc. was capable of making to the manes of the common ancestor. In judging of the nearness of blood relationship or propinquity among the gadyas the test to discover the preferential heir is the capacity to offer the oblations. *Bhaya Ram Singh v. Bhaya Ugur Singh* and the principle laid down in the *Varanasi Jaga* (Cap. Chandra Shastri's Translation page 91 chapter II, part 1 s. 234, and by Dr. Narva Ila's Text, Law Lectures (1850) page 629) lower. It is an undesirable course and one not approved by their Lordships of the Judicial Committee to introduce the opinion of another Judge not a party to the judgment but who expressed an obiter conclusion arrived at in *Benares v. Laxmari Singh* (1914). I. L. R. 37 All. 608

4. *Inheritance—Testation to Impartiate Hindu governed by rule of primogeniture where no custom or usage survives created—Where father who died without male issue—Evidence of separation in part from him—Survivor must leave surviving issue and is not to separate the share after his death for a male issue. The success in the death of a father without male issue to an inheritance is not governed by the rule of primogeniture but by the members of the family in the direct line of descent*

HINDU LAW—INHERITANCE—contd.

maintenance, and where no custom excluding females existed, depended on whether there had been a separation between two brothers, the father and predecessor in title of the deceased holder and the father of the next contingent reversioner. On that question the Courts in India differed, the Subordinate Judge finding that a separation had taken place, and the High Court being of opinion that what had occurred did not, in intention and fact, amount to a complete separation. *Held* (reversing the decision of the High Court), that the evidence clearly proved that there had been a complete separation, and that the widow of the last holder was therefore entitled to succeed to the estate for a Hindu widow's interest in priority to the next male reversioner. **TARA KUMARI v. CHATURBHUS NARAYAN SINGH** (1915). **I. L. R. 42 Calc. 1179**

5. ——— *Right of bandhus to inherit—Bhinnagotra sapindas—Paternal grandfather's son's son's daughter's sons—Limitation of sapinda relationship—Same limitation, namely, 7 degrees on father's side and 5 degrees on mother's side in respect of marriage, affinity, impurity and exequial rites and in cases of inheritance—Mitakshara, Ch. 11, ss. 5 and 6.* The Hindu Law contains its own principles of exposition, and questions arising under it cannot be determined on abstract reasoning, or on analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own law-givers and recognised expounders. The word "*bandhu*" has in the system of the Mitakshara a distinctive and technical meaning, in other words it signifies a *bhinnagotrasapinda*. The appellants as being the paternal grandfather's son's son's daughter's daughter's sons of a deceased Hindu, claimed to succeed to his property as his next-of-kin or *bandhus* under the Mitakshara Law. The respondents contended that the appellants had no heritable right in the property as they did not come within the category of *bandhus* entitled to succeed. *Held*, (a) that the *sapinda* relationship on which the heritable right of collaterals is founded ceases in the case of the *bhinnagotra sapinda* with the fifth degree from the common ancestor; and (b) that in order to entitle a man to succeed to the inheritance of another, he must be so related to the latter that they are *sapindas* of each other. The appellants, therefore, being sixth in descent from the common ancestor, and there being no *sapinda* relationship between them and the propositus, they came with neither (a) nor (b) and were not entitled to inherit. The decision in the case of *Greedhars Lall Roy v. Government of Bengal*, 12 Moo. I. A. 448, does not warrant the contention that the three classes of *bandhus*, namely *atma-bandhus*, *pitri-bandhus* and *matri-bandhus*, into which Vijnaneswara divides the *bandhus* in the Mitakshara, can be added to or extended. The limitation of *sapinda* relationship laid down in the Mitakshara (*Acharya Kanda*), i.e., that it ceases after the 7th ancestor on the father's

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side and the 5th ancestor on the mother's side, is not confined to prohibition in respect of marriage, impurity, and exequial rites only, but applies also to inheritance. *Lallubhai v. Mankuvarbai*, I. L. R. 2 Bom. 388, *Per WESTROPP C. J.*, *Umaid Bahadur v. Udoi Chand*, I. L. R. 6 Calc. 119, and *Babu Lal v. Nanku Ram*, I. L. R. 22 Calc. 339, referred to. The value of the statement by Shastri Golap Chandra Sarkar in his work on Hindu law that "the word '*bandhu*' in the Mitakshara means and includes all cognate relations without any restriction, or at any rate all cognates within 7 degrees on both the father's as well as the mother's side," is considerably discounted by his desire, in order to prevent the deceased's property becoming, so to speak, derelict and thus escheating to the Crown, to bring in the caste people also as *bandhus*; and his employing the English equivalent of relation does not seem to be supported by the definition of *sapinda* relationship in the Mitakshara itself. The argument that the application of the *sapinda* relation in the case of *bandhus* should be extended beyond the 5th degree on the ground that it is not likely that Vijnaneswara would give a right of inheritance to a spiritual preceptor or *guru* before kinsmen, however remotely connected, ignores the peculiar and intimate relationship which exists in the Hindu system between the pupil and the *guru* who has to initiate him into the mysteries of the Vedic laws and rites, and under whose roof he has to pass so many years of his life, in which circumstances the mystical relationship between a spiritual preceptor and his pupil might well be regarded as creating a far closer tie than remote relationship of blood. **RAMCHANDRA MARTAND WAIKAR v. VINAYEK VENKATESH KOTHEKAR** (1914). **I. L. R. 42 Calc. 384**

6. ——— *Inheritance—Mitakshara law—Succession of sapindas of same and different degrees—Uncle of half blood opposed as heir to son of uncle of whole blood—Civil Procedure Code (1882), ss. 317 and 231—Execution of mortgage decree by one of several decree-holders—Suit by heirs of the other decree-holders against decree-holder who, after a sale subject to rights of heirs of the others, claimed and obtained sole possession.* *Held* (affirming the decision of the High Court), that under the Mitakshara law the preference of heirs of the whole blood to those of the half blood confined to "*sapindas* of the same degrees of descent from the common ancestor." Where therefore, the choice of heirs lay between *sapindas* of different degrees, an uncle of the half blood as being less remote from the common ancestor, is a preferential heir to the sons of an uncle of the whole blood. *Suba Singh v. Sarfaraz Kunwar*, I. L. R. 19 All. 215, distinguished. The provisions of s. 317 of the Code of Civil Procedure, 1882, were designed to create some check on the practice of making so-called benami purchases at execution sales for the benefit of judgment-debtors and in no way affect the title of persons otherwise

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beneficially interested in the purchase. One of three joint decree holders of a mortgage decree alone took out execution under a 231 of the Code, stating that the other decree holders had died, and praying that execution might be subject to the rights of their heirs and representatives. He obtained leave to bid at the sale, purchased the property in his own name, and, furnished with a certificate of sale, got possession of the property. *Held*, in a suit by the heirs of the other decree-holders for the shares they were entitled to under the decree, that s. 317 of the Code was not applicable as a defence to the suit, and that the plaintiffs were entitled to recover their shares of the mortgaged property. *Bodh Singh Doodhonia v. Guncak Chunder Sen*, 12 B L R 317, followed. *GANGA SARAI v. KESNI* (1915)

I. L. R. 37 All 545

HINDU LAW--JOINT FAMILY.

1. *Joint family co parcenary--Purchase from a co parcenary--Its effect on family co parcenary--Alienation, not a tenant in common--One member becoming out caste, excluded from the family--Limitation Act (IX of 1908), Art 142* When a co parcenary alienates his share in certain specific family property, the alienor does not acquire any interest in that property but only an equity to enforce his rights in a suit for partition and to have the property alienated set apart for the alienor's share if possible. *Item Chunder Ghose v. Thako Momi Debti*, I. L. R. 20 Cal 333, *Amolal Rom v. Chandan Singh*, I. L. R. 21 All 483, *Narayan bin Babaji v. Nathaji Durgaji*, I. L. R. 25 Bom 201, *Pandurang v. Bhaskar*, 11 Bom H C R 72 and *Ldaram v. Hanu*, 11 Bom H C R 76, approved. The alienor cannot therefore sue for partition and allotment to him of his share of the property alienated. *Venkatarama v. Meera Labai*, I. L. R. 13 Mad 275, *Palani Konan v. Marolomon*, I. L. R. 201 Mad 243, and *Ramkistore Redarnath v. Jaynarayan Ramrachhaji*, 14 Mad L T 163, referred to. Such an alienor has no right to possession and no status as a tenant in common although he might have obtained possession of the property in execution of the decree against one of the co parceners. *Deendyal Lal v. Jugdeep Narain Singh*, L. R. 4 I. A. 217, *Suraj Bansi Koor v. Shro Persad Singh*, I. L. R. 5 Cal 148, *Hardi Narain Sahu v. Rader Perlash Misra*, I. L. R. 10 Cal 626, followed. When a co parcenary became an out caste and was driven out of the family, and did not enjoy family property for over 12 years, it amounted to exclusion and the right to recover his share is barred. *PER BLACKWELL, J.*—The transferee only acquires an equity and it is only a right *in personam* and not a right *in rem* and the transferor remains a member

plea of Hindu Law. *Subba Row v. Ananthanarayana Aiyar*, 23 Mad. L. J. 61, 70, and

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Thuramsa Routhan v. Theruvangaladasami Nair, I. L. R. 34 Mad 269, at p. 270, discredited from. A purchaser of the interest of a co parcenary must sue for a general partition of the entire family property. *Thuramsa Routhan v. Theruvangaladasami Nair*, I. L. R. 34 Mad 269, 274, applied. When such purchaser fails to apply for amendment of his plaint, after an issue is raised questioning the frame of the suit, his suit is liable to be dismissed. *Subba Row v. Ananthanarayana Aiyar*, 23 Mad. L. J. 61, 70, referred to. *MAYARA v. SAMUDRA* (1913) I. L. R. 38 Mad. 684

2. *Joint Hindu family--Son's right to dispute alienation made by father--Son contended but not born at the date of the alienation* *Held*, that a Hindu son is competent to contest and alienation made by the father at a time when the son was in his mother's womb. *Sabapathi v. Sonasundaram*, I. L. R. 16 Mad 76, followed. *Musammam Gowra Chowdhram v. Chemmun Chowdry*, W R Sup. No. 340, not followed. *Kalidas Das v. Krishan Chandra Das*, 2 B L R 103, F B, *Ramamurti Ramchander v. Bhismacharya*, I. L. R. 12 Bom. 105, *Minalshi v. Virappa*, I. L. R. 8 Mad 89, referred to. *DRO NARAY SINGH v. GANGA SINGH* (1914) I. L. R. 37 All 162

3. *Joint Hindu family--Suit against father--Son's position and rights in execution proceedings* A creditor who has obtained a decree against the father of a joint Hindu family is entitled to put to sale the family property. The son whose interests are threatened is entitled to an

against him, the Court in execution can put the property to sale. *Shiam Lal v. Ganesh Lal*, I. L. R. 28 All 258, and *Chinnu Tewari v. Dwarika J All L J 413*, followed. *Naraini Labaniam v. Medhaa Mohan*, I. L. R. 13 Cal 21, referred to. *PER BLACKWELL, J.*—A creditor who at first sues the sons of his debtor parties to a suit against the father, but subsequently withdraw the suit as against them, would be in no worse position as regards the execution of his decree than if he would have occupied if the sons had been impleaded. *INDAR PAL v. THE IMPERIAL BANK* (1915)

I. L. R. 37 All 224

4. *Joint Hindu family--Joint family business--Contracts by certain members of the family for the benefit of the family--Managing members--Liability of the joint family for contracts entered into by managing members* A joint Hindu family firm must be regarded as any other joint family asset if it in fact belongs to the joint family. If a business be carried on by the members of a joint Hindu family for the benefit of the entire family and these are members of the family who do not actively participate in the conduct of the business, particularly if such

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business has been originally established to the detriment of the family property and handed down hereditarily, then the resultant liability of all the members of the family would be referable to the notion of managership by one or more members for the benefit of the rest in the usual sense in which the relations of the manager and other members of the family have often been accepted and defined in all the Courts and the liability of those members of the family not actively engaged in the conduct of the business would probably be restricted to the share of each such member in the joint Hindu family property. In a case where one or more members of a joint Hindu family start a business of their own not at the expense of the joint Hindu family nor with the intention of sharing its profits and losses with the other members, the position of the members so carrying on a joint family business and their liabilities to the other members have to be regulated to the extent to which the conduct of such a firm and the resulting profits fall within the legal notion of self acquisition. *JOHARMAL LADHOORAM v. CHETRAM HARSING* (1914)

I. L. R. 39 Bom. 715

HINDU LAW—MAINTENANCE.

Maintenance of widow, rate of—Possession by widow of other property yielding income—Right to get maintenance from husband's estate. The fact that a Hindu widow is able to maintain herself out of other property is no ground for not giving her some maintenance out of her husband's estate, but it is a factor to be taken into account in determining the quantum of maintenance to be decreed her. The right of a widow of a co-parcener in a Hindu family to maintenance is an absolute right due to her membership in the family and does not depend on any necessity arising from her want of other means to support herself. *Ramawati Koer v. Manjhari Koer*, 4 C. L. J. 74, dissented from. *LINGAYYA v. KANAKAMMA* (1913)

I. L. R. 38 Mad. 153

HINDU LAW—MARRIAGE.

Dissolution of marriage—Custom of caste—custom authorising either spouse to divorce the other on payment of a sum of money fixed by the caste—Custom immoral and cannot be recognised by the Court—Indian Contract Act (IX of 1872), s. 23. A custom, stated to exist among Hindus of the Pakhali caste by which the marriage tie can be dissolved by either husband or wife against the wish of the divorced party, the sole condition attached being the payment of a sum of money fixed by the caste, cannot be recognised by the Court. It must be regarded as immoral or opposed to public policy within the meaning of s. 23 of the Indian Contract Act (IX of 1872) and is equally repugnant to Hindu Law, which regards the marriage tie as so sacred that the possibility of divorce on the best of grounds is permitted only as a reluctant concession. *Reg. v. Karsan Goja* and *Reg. v. Bai Rupa*, 2 Bom.

HINDU LAW—MINOR.

H. C. R. 124, followed. *KESHAV HARGOVAN v. BAI GANDI* (1915) I. L. R. 39 Bom. 538

Minor—Will—Incapacity to make—Contract, incapacity to make—Majority, age of, for making a will—Indian Majority Act (IX of 1875), s. 3, effect of—Onus of proving minority, on propounder of a will—Onus of proof, immaterial, where whole evidence recorded—Indian Evidence Act (I of 1872), s. 32 (5) and (6)—Recital in a father's will as to son's age, admissibility of—Indian Evidence Act (I of 1872), ss. 35 and 82—Register of births and deaths, admissibility of, under—Indian Evidence Act (I of 1872), s. 145—Document, intended to contradict witness, not put to witness, inadmissibility of—Horoscope, when admissible. A Hindu minor though not governed by the Hindu Wills Act or the Indian Succession Act cannot make a will and the age of majority for the purposes of making a will is determined by the Indian Majority Act. *Subbaya v. Kondayya*, 16 Mad. L. J. 135, *Deheram Bulliya v. Somanchi, Seetharamayya*, 2 Mad. W. N. 383, *Bhagirathi Bai v. Vishwanath*, 7 Bom. L. R. 92, *Baigulab v. Thakorelal* I. L. R. 36 Bom. 622, and *Hardwar Lal v. Gomi*, I. L. R. 33 All. 525, followed. *Per TYABJI, J. (WHITE, C. J. Obiter).* When the defence of minority of the testator is raised to invalidate a will, the onus is on the party setting up the will to show that the testator was of full age when he made it and in the matter of onus, minority and testamentary incapacity stand on the same footing; *Smee v. Smee*, 5 P. D. 84, and *Bhagirathi Bai v. Vishwanath*, 7 Bom. L. R. 92, followed. A horoscope which is not spoken to either by its writer or by one who had special means of knowledge as to its correctness is inadmissible in evidence. *Per WHITE, C. J.*—The question on whom the onus of proof lies is not of much importance when the whole evidence has been recorded. *Chaudhry Mohammad Mehdi Hasan Khan v. Sri Mandir Das*, 17 C. W. N. 49, followed. A recital in a testator's father's will mentioning the age of the testator is admissible to prove the age of the testator under s. 32, clauses (5) and (6) of the Evidence Act and illustration (1) to that section. *Oriental Government Security Life Assurance Company, Limited v. Narasimha Chari*, I. L. R. 25 Mad. 183, at p. 207, *Ram Chandra Dutt v. Jogeswar Narain Deo*, I. L. R. 20 Calc. 758, *Deheram Bulleyya v. Somanchi Seetharamayya*, 2 Mad. W. N. 383, and *Subramanian Chetti v. Doraisinga*, 24 Mad. L. J. 49, followed. A register of births and deaths kept under Madras Act III of 1899 is a public document and a certified copy thereof is admissible under ss. 35 and 82 of the Evidence Act. A document by which it is intended to contradict a witness will not be admissible in evidence under s. 145, Evidence Act, unless it is put to the witness or unless it is otherwise admissible under the Act. *Per CURIAM:* Under the Hindu Common Law a minor cannot make any disposition of property during his lifetime, e.g., a gift; and consequently he cannot make any disposition of his property to take

HINDU LAW—MINOR—*concl.*

effect after his death. *KRISHNAMACHARIAN v. KRISHNAMACHARIAN* (1913) 1 L. R. 38 Mad. 168

HINDU LAW—MORTGAGE.

Mortgage—Mistake—Mortgage by father to secure personal debt—Neither antecedent, nor for family purposes, nor

v. 1. The Full Bench decision in the case of *Luchmun Dass v. Giridhar Chowdhry*, 1 L. R. 5 Calc. 555, is still binding on this Court as no contrary rule has yet been laid down by the Judicial Committee of the Privy Council [either in *Nanomi*

has it been superseded by subsequent legislation as a 85 of the Transfer of Property Act (now replaced by O. XXXIV, r 1 of the Civil Procedure Code, 1908) cannot touch the question. Wherein suit upon a mortgage effected by a father governed by the *Mistake* Law for a debt, which is neither antecedent nor for family purposes and not proved to be immoral, had been brought (more than six years) after the death of the father against the sons, some of whom were adult and some minors at the time of the mortgage—*Held* (without deciding when the right to sue accrues), that Art. 132 of the Schedule to the Indian Limitation Act had no application as there was no charge on immovable property enforceable against the sons consequently, Art. 120 governed the case. *Luchmun Dass v. Giridhar Chowdhry*, 1 L. R. 5 Calc. 555, affirmed. *Kishan Pershad Chowdhry v. Tipan Pershad Singh*, 1 L. R. 34 Calc. 735, approved. *Mohawar Datt Tewari v. Kishan Singh*, 1 L. R. 34 Calc. 186, *Biswanath Pershad Mahato v. Jogdip Narain Singh*, 1 L. R. 40 Calc. 312, 17 C. W. N. 1025, *Sita Narain Roy v. Mol shoda Das Mishra*, 17 C. W. N. 1022, overruled. *BRINHANDAN SINGH v. BIDYA PRASAD SINGH* (1915) 1 L. R. 42 Calc. 1068

HINDU LAW—PARTITION.

1. *Mistake—Partition by grandsons—Paternal step-grandmother entitled to a share.* According to the *Mistake*, the paternal step-grandmother is entitled to a share in the family estate when it is partitioned among her grandsons. *VITHAL RAMAIAH v. PRANLAD RAMAKRISHNA* (1915) 1 L. R. 39 Bom. 373

2. *Partition—Property to be partitioned should be taken as existing at the date of the suit—Shares taken away by some of the co-partners before the suit not to be taken into account.* The plaintiff, as representing one branch of the family sued the defendants who represented other two branches, to recover by partition his share in the property which he alleged was undivided. The plaintiff had two brothers, one of whom had separated from the family by receiving his share (which then was 1-12th) some years

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before the suit. The defendants contended that the 1-12th share should go in reduction of the plaintiff's share at the partition, that is, he was entitled to 13 minus 1-12 = 11th share. The lower Court having awarded a 1st share to the plaintiff, some of the defendants appealed—*Held*, that the share to which the plaintiff was entitled in the family property was 1st and not 11th, for partition should be made *res inter statuta* as on the date of the suit. *PRANIVANDAS SHITLAL v. ICHNARAM* (1915) 1 L. R. 39 Bom. 734

3. *Suit for partition by a minor co-partner—Right to mesne profits—No exclusion—Separate living of minor co-partner—Same rule as in the case of major co-partners suit for account—Principle different—Provision for expenses of Upasanyam and marriage of co-partners in a partition suit—Selling apart of funds—Whether Upasanyam and marriage of male co-partners are obligatory ceremonies—Provision for marriage of unmarried sisters whether obligatory—Whether expenses of marriage of a male co-partner is a reasonable expense—Right to maintenance of mother—Whether only son's share liable or share of step sons also liable—Doctrine of *Mistake* as to right by birth examined—Civil Procedure Code (Act V of 1908), O. XXI, r 3.* In a suit for partition by a minor co-partner against his step brother who was a major, the plaintiff is not entitled to recover mesne profits in the absence of proof of exclusion by the manager. The question of the right of a minor co-partner to an account from the manager stands on a different principle and has to be taken in deciding whether a minor is entitled to claim mesne profits. *Arishna v. Sullasko*, 1 L. R. 7 Mad. 561, and *Akhoyachandra Roy Chowdhry v. Pyari Mohan Gaha*, 5 B. L. R. 561, referred to and explained. Where the mother of the plaintiff was joined as a defendant in the suit for partition, but a separate provision for maintenance was refused by the Court of first instance on the ground that her maintenance should come out of the plaintiff's own share only, and she had appealed to the lower Appellate Court but preferred no second appeal to the High Court but was made a respondent in the second appeal preferred by the first defendant, it was held that the plaintiff who was a respondent in the second appeal was competent to prefer a memorandum of objections in the High Court objecting to the lower Court's refusal to make a provision for her maintenance, as he is affected by the judgment and interested in disputing its correctness. The High Court has power under Order XXI, rule 33, of the Civil Procedure Code to pass such decree as it thinks proper dealing with the rights of all parties before it. *Per SUNDARA AYYAR, J.*—In a suit for partition provision must be made in the decree for expenses of the *Upasanyam* and marriage of male co-partners as well as for the expenses of the marriage of the unmarried sisters out of the family property whether it is ancestral or separate or self-acquired property of the father of the

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parties. Marriage is a proper ceremony for a Brahmin and an obligatory ceremony for all Hindus with extremely few exceptions. Modern custom is undoubtedly in favour of allowing the provision. In deciding what ceremonies are regarded as proper and necessary, regard should be had to the sentiments of the community, especially when there is a difference of opinion among the text writers. A brother who has had his own marriage performed at the family expense, is not entitled to object to a similar provision being made for the other brothers. The mother of a co-pereener is entitled to have a provision made for her maintenance out of the entire family property including the share of her step-son as well as the share of her own son. *Zamindar of Oorcad v. Meenakshi Ammal*, 5 Mad. H. C. R. 377, *Kumaravelu v. Virana Goundan*, I. L. R. 5 Mad. 29, *Subbarayalu Chetti v. Kamalavalli Thayramma*, I. L. R. 35 Mad. 147, referred to and followed. *Hemangini Dasi v. Kedarnath Kundu Chowdhry*, I. L. R. 16 Calc. 758, distinguished. Per SADASIVA AYYAR, J. Initiated brothers must set apart from the paternal estate the expenses of the initiation of the uninitiated brothers and sisters before dividing the paternal property whether it is ancestral or self-acquired property of the father. Upanayana or the ceremony of investiture of thread, in the case of a male member of a co-parcenary, and marriage in the case of a female are obligatory *samskaras* which the initiated brothers are bound to perform for their uninitiated brothers and sisters, and the initiated brothers are bound to make a provision for the expenses of performing the same out of the paternal estate before it is divided. Marriage in the case of a male member of a co-parcenary is not an obligatory *samskara* for the performance of which the initiated brother is bound to make a provision out of the paternal property at the partition. *Kameswarasastri v. Veeracharu*, I. L. R. 34 Mad. 433, referred to. Per SPENCER, J., on reference—Marriage is an obligatory ceremony on Hindus who do not desire to adopt the life of a Sanyasi, and a fund for the expenses of the marriage of unmarried co-sharers should be set apart at the partition of the paternal estate. *Srinivasa Iyengar v. Thiruvengadatha Aiyangar* (1914) I. L. R. 38 Mad. 556

HINDU LAW—REVERSIONERS.

Suit for declaration by reversioner that deed of gift by holder of life-interest inoperative and for possession and other reliefs—Prayer in appeal confined to deed of gift only—Propriety of declaration—Court-fee stamp. The plaintiffs claimed to be the reversionary heirs expectant of one D after the deaths of his widow and daughter, together with one S. It appeared that D's widow and daughter has executed a deed of *tanliknamah* in favour of S, who on his part claimed to be the sole immediate reversioner. In the plaint the prayer was for a declaration that the deed of gift was ineffective against the

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plaintiffs, for *khas* possession of the property in suit, for the appointment of a Receiver, for a declaration that the plaintiffs were the reversionary heirs after the death of D's widow and daughter. Court-fees were paid upon these prayers in the lower Court which dismissed the suit as premature but in the High Court the plaintiffs only sought for a declaration as to the deed of gift and for the appointment of a Receiver. At the hearing of the appeal the latter prayer also was given up. Rupees twenty only in court-fees was paid on the appeal. *Held*, that the appeal was sufficiently stamped. That the plaintiffs who on the evidence appeared to be some of the immediate reversioners were entitled to have the deed of gift declared inoperative as against themselves. That the fact that such a declaration must be founded on reasons that could support a declaration that they were heirs to D could not shut them out of their right to a declaration as to the invalidity of the document in question. JAGDEEP NARAIN SINGH v. JAIBASI KOER (1914) 19 C. W. N. 1191.

HINDU LAW—STRIDHAN.

Stridhan—Promise to give dowry at marriage—Land given years afterwards, if jautuka—Ajautuka properties, succession to—Preferential heir—Husband or brother. On the death of a Hindu married woman, governed by the Dayabhaga Law, her *ajautuka stridhan* properties will always be inherited by the brother in preference to the husband, irrespective of the form in which the marriage was celebrated. Property given by a brother to his sister, 7 years after the latter's marriage, in apparent fulfilment of a promise made at the time of marriage to give a quantity of land as dowry, is nevertheless *ajautuka*, as the promise could not have been specifically enforced in respect of the land given, which in fact was given after marriage. MAHENDRA NATH MAITY v. GIRIS CHANDRA MAITY (1915)

19 C. W. N. 1287

HINDU LAW—SUCCESSION.

See KEDAR NATH BANERJEE v. HARIDAS GHOSH . . . 19 C. W. N. 1181

1. ———— *Mitakshara*, Ch. II, s. 5, pl. 4 and 5—*Mayukha*, Ch. VIII, pl. 18—*Compact series of heirs—Brother's widow—Sapinda—Uncle's sons—Brother's widow nearer heir.* The widow of a brother of the deceased is, as a *sapinda*, a nearer heir of the deceased than his paternal uncle's sons. BASANGAVDA v. BASANGAVDA (1914). I. L. R. 39 Bom. 87

2. ———— *Mitakshara*, Chap. II, s. 8, para. 2—*Claim by plaintiff as Pitrai Chela to recover the property of a deceased Bairagi—Claim not maintainable on the ground of custom and Hindu Law—Bairagis—Sanyasis—Hermit, ascetic, student in theology—Heirs—Preceptor, virtuous pupil and spiritual brother in reverse order.* The plaintiff claiming as Pitrai Chela of a deceased Bairagi sued to recover the property of the deceased. *Held*, dismissing the suit, that both on the ground of custom and on the ground of Hindu Law the plaintiff had failed to make out his case. The

HINDU LAW—SUCCESSION—*concl.*

declared heir of a Sanyasi under the Mitakshara is a virtuous pupil. According to the Mitakshara, chap. II, s. 8, para. 2, the heirs of the property of a hermit, of an ascetic and of a student in

I. L. R. 39 Bom. 168

3. **Succession—Maiden's property—Preferential heir.** One Sitabai who became entitled to Rs. 3,000, under an insurance policy on the death of her father, died unmarried; and the plaintiff, the sister of her mother, sued for a declaration that the defendant who was the step-mother of the deceased Sitabai was not her heir under the Hindu Law and that she as the maternal aunt of the deceased was her lawful heir and entitled to the amount that was held in deposit in Court. *Held*, that the plaintiff was not entitled to succeed in preference to the defendant. The sapindas, both of the father and the mother, must refer to the same persons as the mother becomes a member of the father's family on her marriage, *Tularam v. Narayan Ramchandra*, 1. L. R. 36 Bom. 339, *Jangubai v. Jetha Ippaji*, 1. L. R. 32 Bom. 402, and *Dwarika Nath Roy v. Sarat Chandro Singh Roy*, 1. L. R. 39 Cal. 319, followed. The rule that female gotraja sapindas do not inherit as agnate relations taking the rank which they would be entitled to if their claims were based on sapinda relationship has been applied to the succession of male's property, *Balanima v. Pullayya*, 1. L. R. 18 Mad. 168, and *Thayominal v. Annamalai Mudali*, 1. L. R. 19 Mad. 35, referred to. The rule that in the case of succession to ardhnam

21 Mad. L. J. 551, applied *KANALA v. BHAGI RATHI* (1912) 1. L. R. 38 Mad. 45

HINDU LAW—SURETY DEBT.**Surety-debt of father**

—Son's liability for—Order in execution against father as surety—Subsequent partition between father and son—Attachment of property allotted to son's share—Non-liability of such property—Claims petition by son, dismissal of—Subsequent suit by son—Liability of surety, of enforceable in execution—Civil Procedure Code (Act XII of 1908), ss. 253, 543 and 610—Civil Procedure Code (Act V of 1908), s. 53—Inapplicable where father is living. The second defendant obtained a decree for maintenance against the third defendant. Pending an appeal against the decree, the former recovered the amount in execution on the first defendant standing surety for the second defendant. The decree was reversed on

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appeal; the third defendant applied in execution proceedings for restitution against the first defendant as surety, on order was passed in execution for recovery of the amount against the first defendant and certain lands were attached. The plaintiff, who was the son of the first defendant, filed a claim petition objecting to the attachment on the ground that under a partition between his father and himself made subsequent to the order against the first defendant but before the attachment, the properties in question had fallen to his (plaintiff's) share and consequently were not liable to attachment. The petition was dismissed. The plaintiff thereupon brought the present suit for a declaration that the suit properties were not liable to be attached under the order passed against the first defendant. *Held*, that, under ss. 253 and 543 of the Civil Procedure Code (Act XII of 1908), an order can be passed against a surety for recovering in execution proceedings the amount due from him. *Held*, further, that a Hindu son is liable for the surety-debt of his father, to the extent of the joint family property which came to his hands at partition. *Kamachandra Padayachi v. Kondappa Chelli*, 1. L. R. 24 Mad. 555, followed. But a decree for such a debt obtained against the father before partition is not executable after partition against the son and the joint family property allotted to him. *Krishnasami Konan v. Ramasami Ayyar*, 1. L. R. 22 Mad 519, followed. S. 53 of the Code of Civil Procedure (Act V of 1908), which provides that property, in the hands of a son, which under the Hindu law is liable for the payment of a debt of his deceased father in respect of which a decree has been passed, shall be deemed to be assets in the hands of the legal representative only applies to the case of a deceased father; the principle of the section cannot be extended to a case where the father is living. *KANAKAWARAMMA v. VENKATA SUBBA ROW* (1914) 1. L. R. 38 Mad. 1120

HINDU LAW—WIDOW.

1. **Hindu widow—Reversionary—Right of reversioner to the land to set aside alienation and for possession—Striated reversionary heir alleged to be precluded from suing** In this case it was *held* (affirming the decision of the High Court at Allahabad) that the appellant could not maintain the suit (to set aside an alienation by a widow and for possession) because a nearer reversionary heir was in existence whom he had failed to prove to be precluded from suing. The general rule laid down in *Sanjivani Kier v. The Court of Wards*, 1. L. R. 6 Cal. 364, 1. L. S. I. A. 14, followed. *JANARDI v. TARIK* (1914) 1. L. R. 37 All. 45

2. **Right of widow in respect of the property of her deceased husband.** A Hindu widow in possession as such of her husband's estate is not liable to account to anyone but is at liberty to do what she pleased with the property during her lifetime, provided only that she does not impair the reversion. *KANAKA v. LACCA NATH* (1912) 1. L. R. 37 All. 177

HINDU LAW—WILL—contd.

ator. The testator by his will had made his minor son the *malik* of all his properties. The will provided that he should succeed to and enter upon possession and occupation of the whole of his estate and appointed the widow as the manager and legal guardian of the infant son. After providing for the management of the property during the son's minority the will provided—"If after my death the said minor son dies, the mother of

property was to go to the testator's two daughters in equal shares." *Held*, that the gift-over in favour of the widow in the event of the son dying without having attained majority was not a void gift as being repugnant to the form of the gift that was previously made in favour of the son. The provisions of the Indian Succession Act rendered such a gift perfectly good. That s. 16 of the Succession Act which merely incorporated the rules of the English Law provides clearly that the gift-over shall take effect on the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator. The mere fact that the testator contemplated that if his son died a minor and the widow survived him, she would acquire the property before the two daughters and that that event did not take effect in that order, because the widow predeceased the son did not deprive the daughters of the benefit of the legacy given to them by the testator. The gift in favour of the daughters was a valid bequest to them and the defendants, who claimed as being the next heirs of the testator's son, had no interest in the estate of the testator. *DEBKA PLESHAD v. RAGHUNATHAN LAL* (1914)

19 C. W. N. 459

4. *Construction—Indian Succession Act (X of 1865), s. 111, rule of construction in—Legacy with power to sell, make a gift, etc., in respect of properties bequeathed, of absolute gift to legatee. A Hindu in his will provided as follows—"I bequeath to both of you (the testator's widow and his brother's daughter) the rest of the properties . . . You will become entitled to sell or make a gift or *hiba*, etc., in respect of the said properties and hold and enjoy the same . . . If by the will of God one of you should die before the other, whoever will survive will hold and enjoy the whole of the property as *malik*." *Held*, that the case fell within s. 111 of the Indian Succession Act and the widow not having predeceased her husband and having survived the period of distribution took an absolute interest under the will. That the ordinary rule of construction when the testator has given an absolute gift to a legatee and then has made a gift-over simpliciter on a contingency of death is that he was referring to death before the period of distribution. This is clearly provided for in s. 111 of the Indian Succession Act*

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which applies to Hindu wills. The rule in this section is an absolute rule of construction and not a rule of construction which may be contradicted by other evidence appearing on the face of the will. *NISTARINI DEBYA v. BHARAT LAL MEHARJEE* (1914) . . . 19 C. W. N. 52

5. *Execution of a will by a Hindu widow—Suit for declaration by reversioners—Cause of action—Whether suit maintainable. A Hindu widow executed a will and thereby bequeathed her husband's property in her hands to*

his interest. *Held*, that the mere execution of the will did not afford a sufficient reason for granting a declaratory decree. *Ram Bhajan v. Gurcharan, 1 All. L. J. R. 465*, followed, *Jaspal Awasthy v. Indar Bahadur Singh, 1 L. R. 26 All. 255*, referred to. *UMRAO KUNWAR v. BADEKI*, (1915)

1 L. R. 37 All. 422

6. *Will—Birth of a son subsequent to the execution of the will, effect of—Death of the son before the testator—No revocation of the will under the Indian law—Revocation under the old English law prior to Wills Act—Statutory law in India—Indian Succession Act (X of 1865), s. 57—Probate and Administration Act (V of 1881), s. 4. A will, executed by a Hindu testator disposing of his ancestral property, is not revoked in law by reason of the birth subsequent to the execution of the will of a son who died before the testator. The rule of English law that it was essential to the validity of a devise of freehold lands that the testator should be seized thereof at the making of the will, and that he should continue so seized without interruption until his decease, is no longer in force in England in consequence of the enactment of the Wills Act. This principle applicable in India is that adopted in the English Wills Act that a will has the same effect as if it were executed at the time of the testator's death. The statutory law of wills in India has not adopted the principle that a will should be deemed to be revoked in consequence of a change in the circumstances of the testator or a change with respect to his rights to the property disposed of by the will. (See s. 57 of the Indian Succession Act). Survivorship has the effect of rendering a will invalid only with respect to the property which the testator could not dispose of at the time of his death. All other dispositions made by him are valid. *Shib Nath Prasad v. The Collector of Meerut, 1 L. R. 32 All. 35*, and *Shri Rishi v. Duranama Ibrahim, 1 L. R. 23 Mad. 263*, followed. *Bubi v. Venkatesan Naidu* (1913) . . . 1 L. R. 38 Mad. 363*

7. *Ancestral hereditary property—Will—Bequest—Imposed by Coparceners. One Panthamath Ramchandra, a Hindu testator made a will by which he directed that his 2000 should be paid to each of his three daughters out of the ancestral hereditary property. He died*

HINDU LAW—WILL—contd.

leaving a son surviving him. In a suit by one of the daughters to recover amount of the legacy from the estate of the testator: *Held*, that the legacies were directed to be paid by the testator out of property which he had no power to dispose of by will. *Vittla Butten v. Yamenamma*, I. L. R. 8 Mad. H. C. R. 6, followed. *Hanmantapa v. Jivubai*, I. L. R. 24 Bom. 547, distinguished and *Bachoo v. Mankorebai*, I. L. R. 29 Bom. 51, and I. L. R. 31 Bom. 373, distinguished. *PARVATIBAI v. BHAGWANT VISHWANATH PATHAK* (1915)

I. L. R. 39 Bom. 593

8. _____ Will giving power to widow to adopt with consent of trustees where one declines to act. A Hindu testator by his will appointed five trustees of his property and gave power to his widow to adopt a son with their consent and advice; and one of the trustees declined to act. *Held*, that the consent of the declining trustee was not necessary, and the adoption made with the consent of the other four trustees was valid. *BAL GANGADHAR TILAK v. SHRINIVAS PANDIT* (1915)

I. L. R. 39 Bom. 441

9. _____ Probate application for—*Locus standi* to oppose—*Mitakshara* father, will by, in favour of widowed daughter—Widow of predeceased son if may contest will, when no ancestral property—Right to maintenance against devisee—Provision in will, if may be referred to. Where there is no ancestral property, a Hindu governed by the *Mitakshara* law, is ordinarily under no legal obligation to maintain his predeceased son's widow. His obligation is merely a moral or an imperfect obligation which however ripens into a legal obligation on the part of the heir who gets his estate after his death. *Devi Proshad v. Gunwanti Koer*, I. L. R. 22 Calc. 410, and *Siddeshury Dasi v. Jonardan Sarkar*, 6 C. W. N. 530 : s. c. I. L. R. 29 Calc. 557, referred to. *Quære*: Whether such a right can be enforced against a devisee of the entire estate under a will executed by the father-in-law. *Held*, that as the daughter-in-law's right to maintenance which could have been enforced in case of intestacy would be taken away by the will, she ought to be allowed to appear and oppose the grant of probate of the will. Where the right to maintenance is enforceable against the devisee. *Quære*: Whether the claimant of maintenance has sufficient interest to oppose the grant of probate in all cases. In the goods of *Sarat Chunder Patro*, 2 C. W. N. cclvi (1898), *Garabini Dassi v. Pratap Chandra*, 4 C. W. N. 602, and in the goods of *Gobinda Chandra Babajee*, 17 C. W. N. 1141, referred to. The provisions of the will may be looked at to see if the will really affects the right to maintenance. Where the will of the father-in-law directed that all the properties should be sold and a certain sum of money paid to the widowed daughter-in-law and after payment of certain legacies, the balance was to be appropriated by his widowed daughter who was not his heir. *Held*, that in this case

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the will seriously affected the interest of the daughter-in-law and she had sufficient interest to oppose the grant of probate. *Garabini Dassi v. Pratap Chandra*, 4 C. W. N. 602, referred to. *INDUBALA DASI v. PANCHUMANI DAS* (1914)

19 C. W. N. 1169

HINDU LAW—WOMAN'S ESTATE.

1. _____ Woman's Estate—Hindu widow, debts contracted by, for costs of litigation—Binding effect on reversioner—Legal necessity—Facts necessary to be proved by lender—Rate of interest must be proved necessary even when legal necessity for loan exists. The plaintiff, who was an assignee of a mortgage executed by a Hindu widow in respect of her husband's property, of which she was in possession as a Hindu widow, sued to enforce the mortgage against the property in the hands of the reversionary heir, and it appeared that the money was borrowed for meeting the costs of litigation relating to certain suits brought by certain ex-managers of the estate for salary and it appeared that at the time the money was borrowed a portion of the estate was sold in execution of a decree obtained by one of the ex-managers and other properties were going to be sold in execution of another decree obtained by him and there was a heavy claim against the estate by another manager: *Held*, that the debts contracted by a Hindu widow for meeting the costs of litigation in defending her life-estate in her husband's property or for protecting the estate are binding upon the estate in the hands of the reversioner. That it was not necessary for the lender in the present case to show that the debt, which was in litigation, for meeting the costs of which he lent the money to the widow, was or was not her personal debt. It is sufficient, if it is shown that there was pressure upon the estate, that there was necessity for borrowing money for the costs of the litigation or that the creditor made reasonable enquiries and was satisfied of the necessity for the loan. That although a loan by a widow may be necessary, the rate of interest at which she borrowed must be proved to be necessary before interest at that rate can be allowed. *STEVENS v. JANKI BALLABH* (1913).

19 C. W. N. 80

2. _____ Woman's Estate—Decree against Hindu widow and next reversioner in respect of obligation personal to widow, if binds reversion—Mortgage by widow and next reversioner, if binds reversion. A sale of property inherited by a Hindu woman in execution of a decree for costs obtained against her personally does not bind the reversioners. *Jugal Kishore v. Jotindra Mohan*, I. L. R. 10 Calc. 985, 991, followed. The fact that the decree was obtained against her and the next reversionary heir jointly does not give the purchaser anything more than the qualified interest of the woman. A mortgage of a portion of the inheritance in the hands of a Hindu woman executed by her jointly with the next reversioner does not necessarily bind the

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exceed Rs. 500 : *vide* Art. 8 of Schedule II of the Provincial Small Cause Courts Act. *Soundaram Ayyar v. Sennia Naickan*, I. L. R. 23 Mad. 547, distinguished. When land ceased to be garden-land about a quarter of a century ago, and tenants have been settled on the land since then, the tenure is not protected and does not fall within the 4th exception to s. 37 of the Revenue Sale Act (XI of 1859) and is liable to be annulled. The effect of a sale is not *ipso facto* to avoid under-tenures ; the purchaser has the option of avoiding them or keeping them intact. *Titu Bibi v. Mohesh Chander Bagchi*, I. L. R. 9 Calc. 683, followed. It is necessary therefore that the purchaser must by some unequivocal act indicate his intention to avoid under-tenures if he desires to do so and the election of the purchaser to avoid must be brought to the knowledge of the under-tenure holder. A formal written notice is not essential. *Dursan Singh v. Bhawani Koer*, 17 C. W. N. 984, followed and explained. The facts, that the purchaser demanded rents from the tenants to the knowledge of the under-tenure holder, sued the tenants for rent, took out warrants of attachment in execution of decrees and realized rents from the tenants in repudiation of the under-tenure-holder's title, go to show that the under-tenure-holder had not only notice of unequivocal acts on the part of the purchaser indicating his election to avoid the *mokarrari* but the purchaser had in fact obtained possession of the estate. *Mir Waziruddin v. Deoki Nandan*, 6 C. L. J. 472, distinguished. *Per* N. R. CHATTERJEE J. The mere fact that a garden was made on a piece of land a quarter of a century before the sale, would not make it land on which a garden has been made for all time to come. *Per* BEACHCROFT, J. No particular method of expressing an intention to annul an under-tenure is necessary. There must be established (i) a definite intention to annul, (ii) an indication of that intention to the under-tenure-holder. To afford protection the work must *still be in existence* or the land be used for the purpose of the work. The perfect tense in "leases of land whereon . . . gardens have been made" denotes a present state. *Obiter* : If the *busti* land is covered by the lease of the land on which the mill stands, or if the *busti* is an integral part of the mill, and exists only for the purposes of the mill, it is possible that it might be protected. *SAHADORA MUDIALI v. NABIN CHAND BORAL* (1914). . . I. L. R. 42 Calc. 638

HONORARY SECRETARY.

See DECLARATORY SUIT.

I. L. R. 37 All. 313

HOROSCOPE.

— admissibility of—

See HINDU LAW—MINOR.

I. L. R. 38 Mad. 166

HORSE.

— *Suit for damages for injury done by vicious horse—Liability of owner*

HORSE—concl'd.

— *Absence of negligence on owner's part if can exonerate him when he knew of the animal's vice.* The plaintiff sought to recover damages for injuries suffered by reason of his having been bitten by the defendant's horse. The finding was that the horse was a vicious animal and it did bite the plaintiff but that the defendant was not guilty of negligence and on this ground the lower Court dismissed the suit. *Held*, that if the horse was a vicious animal and if that fact was known to the defendant and knowing this he kept the horse and if it injured the plaintiff, then the defendant must be held liable notwithstanding that he was not guilty of negligence. Negligence is not a necessary ingredient in a suit of this nature. *GANDA SINGH v. CHUNI LAL SHAHA* (1915). 19 C. W. N. 916

HUNDI.

See PENAL CODE (ACT XLV OF 1860), s. 405. . . I. L. R. 38 Mad. 639

HUNDI SHAH JOG.

Payment to the Shah—Fraudulent hundi—Duty of Shah to trace the drawer—Payment of hundi not as Shah but as indorsee for collection of the hundi—Custom of Marwari merchants—In case of fraud, notice, when to be given—Laches. On the 10th June 1912 the defendants presented to the plaintiff for payment a hundi for Rs. 3,000 purporting to be drawn by one R in favour of M on the plaintiff payable at sight to a Shah. The plaintiff having had no advice regarding the said hundi refused to pay the said sum of Rs. 3,000. On the next day the plaintiff received a letter purporting to be written by R from Harpalpur, enclosing a railway receipt for 300 bags of linseed, stated to have been consigned by R from Ranipur Station, and asking the plaintiff to sell the goods and in the meantime to accept and pay on presentment two hundis, each for Rs. 3,000 drawn by R in favour of M on the plaintiff, payable at sight to a Shah. The same day the plaintiff handed over the said railway receipt to one K and received payment of Rs. 5,600. The plaintiff thereupon paid Rs. 3,000 together with one day's interest to the defendants in respect of the hundi which had been presented by the defendants to the plaintiff on the previous day as aforesaid and which was one of the hundis mentioned in the letter. The goods referred to in the railway receipt never arrived and K returned the said receipt to the plaintiff and was repaid the sum of Rs. 5,600. On inquiries being instituted it was found that no such person as R existed and that the hundi and the railway receipt were forged. The plaintiff sued to recover the money from the defendants relying on the custom prevailing among Marwari Merchants that the Shah who obtained payment of a Shah Jog hundi was, in the event of the hundi turning out to be a false, fraudulent, stolen, or forged hundi, bound to refund the amount of the hundi with interest unless he "traced it to its source," i. e., produced the actual drawer or the

HUNDI SHAH JOG—concl'd.

person who committed the fraud *Held*, (i) that the defendants had been paid not as Shah but as endorsees for collection of a hundi purporting to be drawn against the security of a railway receipt. (ii) Assuming that there might be a liability imposed on the defendants by reason of the payment, to refund or to trace the hundi to its source, this would only be the case provided notice was given within reasonable time of the discovery of the forgery, that is, provided the plaintiff lost no time in making this communication and claiming the refund. (iii) That the hundi had been "traced to its source" within the meaning of the Marwar Association Rules before the defendants received information of the fraud. *R. D. SETHNA v. JWALAPRASAD GAYAPRASAD* (1914) I. L. R. 39 Bom. 513

HOUSE SEARCH.

See PENAL CODE (ACT XLV OF 1860), ss. 332, 323. I. L. R. 37 All. 353

HURT.

See PENAL CODE (ACT XLV OF 1860), ss. 337, 338. I. L. R. 39 Bom. 523

HUSBAND AND WIFE.

See HINDU LAW—HUSBAND AND WIFE.

HUSBAND'S ESTATE.

right to get maintenance from—

See HINDU LAW—MAINTENANCE.
I. L. R. 38 Mad. 153

HYPOTHECATION.

See STAMP ACT (II OF 1899), s. 2 (17).
ETC. I. L. R. 38 Mad. 646

I**IDENTITY OF TRANSACTION.**

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

IMMALI SHARE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 42 Calc. 897

ILLEGAL COMPOSITION.

See UNDUE INFLUENCE.
I. L. R. 42 Calc. 286

ILLEGITIMATE CHILDREN.

right of—

See HINDU LAW—INHERITANCE.
I. L. R. 38 Mad. 1144

IMMORAL CUSTOM.

of caste—

See HINDU LAW—MARRIAGE.
I. L. R. 39 Bom. 538

IMMOVEABLE PROPERTY.

sale of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, r. 89
I. L. R. 38 Mad. 775

IMPARTIBLE ESTATE.

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 1179

IMPROVEMENTS.

See LANDLORD AND TENANT
I. L. R. 38 Mad. 710
See MALABAR TENANTS' IMPROVEMENTS
ACT (MAD I OF 1900), ss. 3 AND 5.
I. L. R. 38 Mad. 954

INADEQUACY OF PRICE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 42 Calc. 897

INALIENABILITY.

See LIMITATION ACT (XV OF 1877),
SCH. II, ART. 91.
I. L. R. 38 Mad. 321

INAM.

See MADRAS REGULATION (XXV OF 1902), s. 4.
I. L. R. 38 Mad. 620

INAM AUTHORITIES.

duties of—
See LANDLORD AND TENANT.
I. L. R. 38 Mad. 185

INAM SETTLEMENT.

See LANDLORD AND TENANT.
I. L. R. 38 Mad. 155

INAMDAR.

See MADRAS ESTATES LAND ACT (I OF 1909), s. 8 (EXCEP)
I. L. R. 38 Mad. 608, 691

See PROVINCIAL SMALL CAUSES COURTS
ACT (IX OF 1887), SCH. II, ART. 13.
I. L. R. 39 Bom. 131

INAMDAR AND RYOT.

See MADRAS ESTATES LAND ACT (I OF 1909) . . . I. L. R. 38 Mad. 33

INAMDAR AND ZAMINDAR.

See MADRAS ESTATES LAND ACT (I OF 1909), s. 8, ETC.
I. L. R. 38 Mad. 608

INCAPACITY.

— to make a will—

See HINDU LAW—MISGE.
I. L. R. 38 Mad. 166

INCOME TAX.

Exemption, liability to
income tax—Dut, maintainability of, for declaration
of non-liability to tax—Collection, jurisdiction of,
to assess income tax—Income Tax Act (II of 1916)—

INCOME TAX—concl'd.

Contract Act (IX of 1872), s. 72. Income accruing to an executor under the will of a testator is 'income' as defined in s. 3, cl. (5) of the Income Tax Act, 1886, and is liable to be taxed under the Act. It is the Collector's duty to determine what persons are chargeable in respect of sources of income other than salaries and pensions, profits of companies and interest on securities. A suit brought by an executor of an estate for a declaration that as executor he was not liable to pay income tax in respect of any income of the estate and that the Collector, in realizing the sums paid to him, acted without jurisdiction, and for a decree for the amount so paid with interest, does not lie. Payment of income tax by the executor of an estate, under protest, on the ground that as executor no tax was payable by him, may be regarded as paid under coercion within the meaning of s. 72 of the Contract Act, *Kanhaya Lal v. National Bank of India, Ltd.* I. L. R. 40 Calc. 598; L. R. 40 I. A. 56, referred to. *FORBES v. SECRETARY OF STATE FOR INDIA* (1914). I. L. R. 42 Calc. 151.

INCOME TAX ACT (II OF 1886).

See INCOME TAX. I. L. R. 42 Calc. 151

INCUMBRANCE.

See HOMESTEAD LAND.

I. L. R. 42 Calc. 638

INCURABILITY.

See HINDU LAW—INHERITANCE.

I. L. R. 38 Mad. 250

INDIAN HIGH COURTS ACT (24 & 25 VICT. c. 104).

See HIGH COURTS ACT.

s. 15—

See MADRAS CITY MUNICIPAL ACT (III OF 1904). I. L. R. 38 Mad. 581

INDIAN MARINE SERVICE.

See SERVICE OF SUMMONS.

I. L. R. 42 Calc. 67

INFANT.

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 42 Calc. 351

INFRINGEMENT.

See TRADE MARK. I. L. R. 37 All. 446

INHERITANCE.

See HINDU LAW—INHERITANCE.

I. L. R. 42 Calc. 384, 1179

See HINDU LAW—INHERITANCE.

I. L. R. 38 Mad. 1144

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 254

by mortgagor of decree for sale on prior mortgage—

See MORTGAGE. I. L. R. 37 All. 309

INHERITANCE—concl'd.

right of women to—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.

I. L. R. 38 Mad. 850

INJUNCTION.

See CIVIL PROCEDURE CODE (1908), s. 94, O. XXXVIII, R. 5; O. XXXIX, R. 1.

I. L. R. 37 All. 423

See MINE. 19 G. W. N. 887

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

1. Limitation—Suit

for damages for obtaining perpetual injunction maliciously and without reasonable cause—*Limitation Act (IX of 1908), Sch. I, Art. 42.* No suit lies for damages against a defendant for, maliciously and without reasonable or probable cause, obtaining a perpetual injunction which was subsequently dissolved on appeal. *Nand Coomar Shaha v. Gour Sunkar*, 13 W. R. 305, doubted, *Quartz Hill Mining Co. v. Eyre*, 11 Q. B. D. 690, *Smith v. Day*, 21 Ch. D. 421, *Hari Nath Chatterjee v. Mothur Mohun Goswami*, I. L. R. 21 Calc. 8; L. R. 20 I. A. 188, *Chander Cant Mookerjee v. Ram Coomar Coondoo*, 22 W. R. 138, *Cotterell v. Jones*, 11 C. B. 713, *Turner v. Ambler*, 10 Q. B. 252, referred to. Under Art. 42, Sch. I of the Limitation Act (IX of 1908) time begins to run from the date when the injunction ceases. *MOHINI MOHAN MISSEER v. SURENDRA NARAYAN SINGH* (1914). I. L. R. 42 Calc. 550

2. Temporary Injunction when should be granted—Status quo, maintenance of—Indian High Courts Act (24 & 25 Vict., c. 104), s. 15—Jurisdiction of the High Court to interfere.

The plaintiffs were some of the superior landlords of the disputed property which consisted of two plots of land and claimed to have been in direct possession of about one-third of the property. The defendants who were in occupation of the remainder being alleged to have obtained a permanent lease from some of the co-sharers of the plaintiffs commenced to dig the foundations for an extension of their factory house. The plaintiffs sued for partition and applied for a temporary injunction. The defendants notwithstanding notice of the application for injunction expedited the erection of the building. It appeared that on partition the plaintiffs could not conveniently be allowed any share of one of the plots, but must be limited to an allotment out of the other plot. Held, that there was a substantial question in controversy between the parties and pending its determination the status quo should be maintained to the necessary extent. That it was desirable that the plot a share of which only could be allotted to the plaintiff on partition should be retained in status quo so that the Court might be free to grant such relief as it might think proper and an injunction should be granted restraining the defendants from

INJUNCTION—*concl.*

High Courts' Act and in a case of this description it was essential that the High Court should interfere to prevent what might otherwise place one of the litigating parties in an unfairly advantageous position and thus turn out in the end to be the cause of an irreparable injustice to the other. *HEMANTA KUMAR ROY v BANANAGORE JUTE FACTORY Co* (1914)

19 G. W. N. 442

INJUNCTION AND DECLARATION.

See *DECLARATION*, etc

L. L. R. 38 Mad. 922

INJURY.

See *CRIMINAL PROCEDURE CODE*, ss 345 AND 439 . L. L. R. 37 ALL 419

INQUIRY.

See *CRIMINAL PROCEDURE CODE*, ss 107 AND 117 . L. L. R. 37 ALL 30

order passed without—

See *LIMITATION ACT (IX of 1908)*, s 23, ART 47 . L. L. R. 38 Mad. 432

INSOLVENCY.

See *CIVIL PROCEDURE CODE (ACT V of 1908)*, O XXII, r. 10

L. L. R. 39 Bom. 568

See *INSOLVENCY ACT (III of 1907)*

See *LIMITATION ACT (XV of 1877)* SEC II, ART. 179

L. L. R. 39 Bom. 20

See *MIRON* . L. L. R. 42 Calc. 225

See *PROVINCIAL INSOLVENCY ACT (III of 1907)*, s 30 . L. L. R. 37 ALL 252

of partner—

See *MIRON* . L. L. R. 42 Calc. 225

transfer of petition for—

See *PRESIDENCY TOWNS INSOLVENCY ACT (III of 1909)*, s 90

L. L. R. 38 Mad. 472

1. ———— Attachment under Mortgage decree and order for sale of mortgaged property—Vesting order under s. 7 of *Insolvency Act (II of 12 Vict. c. 21)*, effect of—Sale after vesting order—Sale by Official Assignee to plaintiff—Title of purchaser from Official Assignee as against judgment-creditor purchasing at sale in execution of his own decree—Notice. An attachment in execution of a money-decree on a mortgage of land, followed by an order for sale of the interest of the judgment-debtor does not create any charge on the land. *Sarkis v Boudouh Bares*, 1 N. H. P. 172, referred to. An attachment prevents and

INSOLVENCY—*concl.*

avoids any private alienation, but does not invalidate an alienation by operation of law such as is effected by a vesting order under the *Indian Insolvency Act (11 & 12 Vict. c. 21)*, and an order for sale though it binds the parties does not confer title. Previous to the 5th September 1904 a colliery leased to the judgment debtors was attached under a mortgage decree by the respondents (judgment creditors), and an order for sale on 5th September was made, but at the request of the judgment debtors the sale was postponed until the 10th. On 8th September the judgment debtors filed their petition in the Insolvency Court in Calcutta and the usual vesting order was made on the same day. On 12th September the execution proceedings were stayed. After issue of notice, on the application of the respondents, to the Official Assignee to show cause why he should not be substituted in the place of the judgment debtors, the Subordinate Judge on 10th January 1905, in finding that the notice had been duly served, made the order for substitution and fixed the sale for 6th March 1905, on which day the property was sold, and purchased by the respondents who in June were put into possession. Meanwhile on 23rd May 1905 the Official Assignee with leave from the Insolvency Court in March 1905 sold the property to a purchaser, who on 21st June 1905 sold it to the plaintiffs by whom on 16th July 1908 the present suit was brought for possession of the colliery. Held (reversing the decision of the High Court), that the notice calling on the Official Assignee to show cause why he should not be substituted for the judgment debtors was not a proper notice under s. 218 of the *Civil Procedure Code* (ss2. A notice under that section should have called on him to show cause why the decree should not be executed against him. But assuming the notice to have been duly served (which was denied) the sale was altogether irregular and inoperative. The property having vested in the Official Assignee it was wrong to allow the sale to proceed at all. The judgment-creditors had no charge on the land, and the Court could not properly give them such a charge at the expense of the other creditors of the insolvents. In the second place, no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding on him, and accordingly he was not bound by anything which had been done. In the third place, the judgment-creditors had, at the time of the sale, no right, title or interest which could be sold or vested in a purchaser, and consequently the respondents acquired no title to the property. *Maharaja v Sarkis*, 1 L. R. 25 Luck. 337; L. R. 271 d. 216, distinguished. No proper notice was served under s. 214 of the *Civil Procedure Code*, and the respondents had full notice, and were responsible for the irregularities of the procedure as *jud. factum*. *SATH DAS v. SHYAM DAS* (1914)

L. L. R. 42 Calc. 72

2. ———— *Interim Receiver*
—Insolvent's money, withdrawal of, before the ad-

INSOLVENCY—concl'd.

judication order—Provincial Insolvency Act (III of 1907), s. 13, cl. (2), s. 16, cl. (6), s. 34, cl. (1)—Bankruptcy Act of 1883 (46 & 47 Vict., c. 52), s. 40. An interim receiver is appointed for the protection of the estate of the debtor for the benefit of the entire body of creditors. *Ex parte Fox, L. R. 17 Q. B. D 4*, referred to. Cl. (1) of s. 34 of the Provincial Insolvency Act restricts the operation of s. 16, clause (6) thereof. A creditor, who had attached a sum of money due to the insolvent before his estate vested in the receiver appointed after the adjudication order, is entitled to apply it exclusively in satisfaction of his debt. *MADHU SARDAR v. KHITISH CHANDRA BANERJEE (1914)*

I. L. R. 42 Calc. 289

3. *Practice—Presidency Towns Insolvency Act (III of 1909), s. 36, (4), (5), whether applicable to contentious matters.* S. 36 (4) and (5) of the Presidency Towns Insolvency Act, 1909, is intended to provide a summary procedure for ordering payment of debts due, and delivery of property belonging to an insolvent, where there is no dispute; it is not intended for contentious matters or for following property the subject of fraudulent preference or dishonest concealment. *In re J. M. LUCAS AND ANOTHER (1914)* I. L. R. 42 Calc. 109

INSOLVENCY ACT (11 & 12 VICT. c. 21).

s. 7—

See INSOLVENCY . I. L. R. 42 Calc. 72

s. 86—*Judgment entered up under the above section—Insolvent absent.* After due notice being served by the Official Assignee, an insolvent failed to appear at the hearing. Judgment was entered up against the insolvent under section 86 of the Indian Insolvents Act. *In re BALCHAND SUBANA (1914)*. 19 C. W. N. 433

INSOLVENT.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 18, 36 AND 47.

I. L. R. 37 All. 65

INSTALMENT BOND.

See LIMITATION . I. L. R. 38 Mad. 374

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 132 . I. L. R. 37 All. 400

Consent not to sue on failure to pay instalment, if would amount to waiver—Limitation Act (IX of 1908), Sch. I, Art. 75. Waiver is consent to dispense with or forego something to which a person is entitled. Where it was proved that demand was made in three successive years in respect of three instalments due upon an instalment bond, but the plaintiff consented not to sue for the whole amount as he was entitled to do under the bond for default on the first two occasions but refused to consent on the third: *Held*, that this amounted to a waiver of the payment of the two earlier instalments. When the instalment bond was executed on the 6th of November 1908 and provided payment of Rs. 10,000 by

INSTALMENT BOND—concl'd.

annual instalments of Rs. 400, commencing from the 30th of September 1909, and further that in case of default the whole amount payable on the bond was to fall due and the plaintiff waived the payment of the first two instalments as aforesaid and filed a suit for the recovery of the whole amount on the 12th of November 1914: *Held*, that his suit was not barred by limitation and it was decreed for Rs. 9,200. *RAM CHUNDER BANKA v. RAWATMULL (1915)*.

19 C. W. N. 1172

INSTALMENTS.

default in payment of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 48 . I. L. R. 39 Bom. 256

INSTRUMENT.

See ATTESTATION OF INSTRUMENT

I. L. R. 37 All. 350

INTANGIBLE PROPERTY.

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Calc. 455

INTENT.

See PENAL CODE (ACT XLV OF 1860) s. 456 . . . I. L. R. 37 All. 395

INTENT AND KNOWLEDGE.

See PENAL CODE (ACT XLV OF 1860), s. 86. . . . I. L. R. 38 Mad. 479

INTEREST.

See MORTGAGE . I. L. R. 42 Calc. 1146

See SLAVERY BOND.

I. L. R. 42 Calc. 742

liability of trustee for—

See TRUSTEE . I. L. R. 38 Mad. 71

1. *Contract Act (IX of 1872), ss. 16, 74—Undue influence, presumption of—Penalty—Excessive and usurious interest—Duty of the Court.* Where there is ample security, the exaction of excessive and usurious interest in itself raises a presumption of undue influence which it requires very little evidence to substantiate. The attempt to conceal the real rate of interest, by describing it as one pice in the rupee per mensem or, as in the present case, Rs. 5 per mensem is evidence of an intention to get the better of the debtor. The law lays down that there must be a footing of complete equality between debtor and creditor and they must be, so to speak, at arm's length to make a bargain, which is in itself harsh and unconscionable, enforceable at law. *Carringtons, Ltd. v. Smith, [1906] 1 K. B. 79, In re a Debtor, [1903] 1 K. B. 705*, referred to. Where there is ample security, an excessive rate of interest has been held to be anything over ten per cent. Where there is no security, no rate of interest can be considered excessive. There can be no standard rate on personal loans, and where the parties are reasonably

INTERLOCUTORY ORDER.*See* JURISDICTION.

I. L. R. 42 Calc. 926

INTERNATIONAL LAW.

— rules of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 86. I. L. R. 38 Mad. 635**IRREGULARITY.***See* CRIMINAL PROCEDURE CODE, ss. 145, 522. I. L. R. 37 All. 654*See* SALE FOR ARREARS OF REVENUE.

I. L. R. 42 Calc. 765

J**JAIGIR.**

Sanad, construction of
—Tenure created by document—Custom—Life estate
—Use of the words "putra poutradi"—Absolute and heritable estate—Regulation XXXVII of 1793, s. 15. A grant of a *jaigir* is a grant for life only, but in the absence of any custom to the contrary, the addition of the words "*putra poutradi*" in the grant implies an absolute and heritable estate and passes an estate of inheritance. Under a *sanad patta* the ancestor of the plaintiff granted a *jaigir* in the district of Hazaribagh to the grantee and his *putra poutradi*. On the death of the grantee and of his sons without any male issue, the plaintiff finding that the tenants of the *jaigir* stopped paying him the rents, brought a suit for resumption of the *jaigir* on the ground that according to custom the grant was a service grant and resumable by the grantor and his representatives on failure of male issue in the line of the grantee, and obtained a decree. On appeal to the High Court:—*Held*, that the original grantee took an absolute, heritable, and alienable estate and that all his heirs were capable of inheriting it. *Ramlal Mookerjee v. The Secretary of State for India*, I. L. R. 7 Calc. 304; L. R. 8 I. A. 46, followed. *Gulabdas Juggivandas v. The Collector of Surat*, I. L. R. 3 Bom. 186; L. R. 6 I. A. 54, *Bhujanga Rau v. Ramayamma*, I. L. R. 7 Mad. 387, and *Lalit Mohun Singh Roy v. Chukkun Lal Roy*, I. L. R. 21 Calc. 831; L. R. 21 I. A. 76, referred to. *Perkash Lal v. Rameshwar Nath Singh*, I. L. R. 31 Calc. 561, and *Roopnath Konwar v. Juggunnath Sahee Deo*, 6 S. D. A. Sel. Rep. 158, distinguished. *RAM SARAN LALL v. RAM NARAYAN SINGH* (1914). I. L. R. 42 Calc. 305

JALKAR.

— right of—

See FISHERY. I. L. R. 24 Calc. 489**JOINT BUSINESS.***See* MAHOMEDAN LAW—JOINT BUSINESS.
I. L. R. 38 Mad. 109**JOINT EXECUTION.***See* PROMISSORY NOTE.

I. L. R. 38 Mad. 680

JOINT FAMILY BUSINESS.*See* HINDU LAW—JOINT FAMILY.

I. L. R. 39 Bom. 715

JOINT FAMILY PROPERTY.

— if exists in Mahomedan Law—

See MAHOMEDAN LAW—JOINT BUSINESS.

I. L. R. 38 Mad. 1099

JOINT HINDU FAMILY.*See* HINDU LAW—JOINT FAMILY.*See* REGISTRATION.

I. L. R. 37 All. 105

Ancestral property—Will—Probate—Payment of full probate duty. In a case where there was admittedly a joint Hindu family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised, and therefore they were exempted from the payment of any probate duty:—*Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kaira v. Chunilal*, I. L. R. 29 Bom. 161, distinguished. *KASHINATH PARSHARAM v. GOURAVABAI* (1914). I. L. R. 39 Bom. 245.

JOINT POSSESSION.*See* HINDU LAW—HUSBAND AND WIFE..

I. L. R. 38 Mad. 1036

JOINT PROPERTY.*See* HINDU LAW—HUSBAND AND WIFE.

I. L. R. 38 Mad. 1036

See PARTITION. I. L. R. 37 All. 155**JOINT TRADE.***See* HINDU LAW—HUSBAND AND WIFE.

I. L. R. 38 Mad. 1036

JOINT TRIAL.*See* EVIDENCE ACT (I OF 1872), s. 30.

I. L. R. 37 All. 247

See MISJOINDER OF CHARGES.

I. L. R. 42 Calc. 1153

JOINT VENTURE.

— agreement for—

See PARTNERSHIP.

I. L. R. 39 Bom. 261

JUDGE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 27, CL. (6)

I. L. R. 38 Mad. 414

JUDGMENT.

See RES JUDICATA.

I. L. R. 38 Mad. 158

— setting aside a, for fraud—

See FRAUD. I. L. R. 38 Mad. 203

— Not pronounced—*Record lost*—*Procedure*. Where in a criminal case the accused was convicted and sentenced, the records in the case being at the time lost. *Held*, that it was unnecessary for the High Court to order a retrial especially in the absence of an appeal by the accused person. There is no provision of law which enacts that unless all the records of a case are in the court house at the time of conviction and sentence the conviction and sentence are void and should be quashed or that the Sessions Judge a trial has been held or the sentence passed without jurisdiction. Where a judgment has been lost the appropriate course is for the Sessions Judge to rewrite it from memory, and from the materials before him and place it on record. *Re KAMAK BHAMNA* (1913) I. L. R. 38 Mad. 498

JUDGMENT CREDITOR.

See INSOLVENCY. I. L. R. 42 Calc. 72

JUDGMENT-DEBTOR.

See ARREST OF A MONEY DEBTOR.

I. L. R. 38 Mad. 36

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 34. I. L. R. 37 All. 452

— death of—

See CIVIL PROCEDURE CODE (ACT V OF 1909), ss. 47 AND 50

I. L. R. 38 Mad. 1076

JUDICIAL ENQUIRY.

See SURETY. I. L. R. 42 Calc. 706

JUDICIAL NOTICE.

See MATRILLAS OF NORTH MALABAR.

I. L. R. 38 Mad. 1052

JURISDICTION.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CIVIL AND REVENUE COURTS.

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF HIGH COURT.

See JURISDICTION OF MAGISTRATE.

See AGRA TENANCY ACT (II OF 1901), R. 193. I. L. R. 37 All. 93

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), s. 22 (3).

I. L. R. 37 All. 222

JURISDICTION.—contd.

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), s. 10. I. L. R. 39 Bom. 136

See CIVIL COURTS ACT (XII OF 1887), ss. 21 AND 22. I. L. R. 37 All. 76

See CIVIL PROCEDURE CODE (1908), s. 9. I. L. R. 37 All. 313

See CIVIL PROCEDURE CODE (1908), s. 20 (c). I. L. R. 37 All. 189

See CIVIL PROCEDURE CODE (1908), s. 152. I. L. R. 37 All. 323

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13. I. L. R. 37 All. 203

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss. 119 AND 220.

I. L. R. 37 All. 20

See CRIMINAL PROCEDURE CODE, 1898, ss. 115 AND 522. I. L. R. 37 All. 654

See CRIMINAL PROCEDURE CODE, 1898, ss. 179 TO 184. I. L. R. 38 Mad. 770

See CRIMINAL PROCEDURE CODE, 1898, s. 332. I. L. R. 37 All. 331

See CRIMINAL PROCEDURE CODE, 1898, ss. 345 AND 433. I. L. R. 37 All. 419

See CRIMINAL PROCEDURE CODE, 1898, s. 470. I. L. R. 37 All. 344

See DECKEE. I. L. R. 39 Bom. 34

See EVIDENCE. I. L. R. 38 Mad. 160

See FORFEITURE. I. L. R. 42 Calc. 730

See GUARDIANS AND WARDEN ACT (VIII OF 1890), ss. 12, 21, 25.

I. L. R. 37 All. 515

See HIGH COURTS ACT (21 & 23 VICT., c. 104), ss. 2, 9 AND 13.

I. L. R. 39 Bom. 604

See HOMETEAD LAND.

I. L. R. 42 Calc. 638

See MADRAS CITY MUNICIPAL ACT (MAY 111 OF 1904). I. L. R. 38 Mad. 581

See PENAL CODE (ACT XLV OF 1860), s. 405. I. L. R. 38 Mad. 653

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 35.

I. L. R. 37 All. 430

See REGULATION (V OF 1856), ss. 141, 142.

I. L. R. 37 All. 220

See SANCTION FOR PROSECUTION.

I. L. R. 42 Calc. 667

See TRADE MARK. I. L. R. 37 All. 446

— of Municipal Courts—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 20. I. L. R. 38 Mad. 623

I. — *Proceedings under s. 10, Civil Procedure Code—High Courts Jurisdiction to interfere with orders of Magistrate and District Courts (Act V of 1908), s. 10—*

JURISDICTION—contd.

Act (24 & 25 Vict. c. 104), s. 15. The jurisdiction of a Court in a proceeding under s. 10 of the Code of Civil Procedure is limited to stopping a new suit if the circumstances mentioned in that section as conditions precedent to the passing of the order be found by the Court to exist. Courts have no jurisdiction to decide the question of *res judicata* in such a proceeding. Where a Court has jurisdiction to pass an order, but it has been exercised in violation of the provisions of the law and under a misapprehension of the questions at issue, the Court must be held to have acted with material irregularity in the exercise of its jurisdiction. *Venkubai v. Lakshman Venkoba Khot*, I. L. R. 12 Bom. 617, *Sew Bux Bogla v. Shib Chunder Sen*, I. L. R. 13 Calc. 225, *Jugobundhu Puttuck v. Jodu Ghose*, I. L. R. 15 Calc. 47, *Tarini Charan Banerjee v. Chandra Kumar Dey*, 14 C. W. N. 788, referred to. The High Court is entitled to interfere under s. 15 of the Charter Act, if not under s. 115 of the Code, with interlocutory orders, when they might lead to failure of justice or irreparable injury. *Dhapi v. Ram Pershad*, I. L. R. 14 Calc. 768, *Gobinda Mohan Das v. Kunja Behary Dass*, 14 C. W. N. 147, and *Amjad Ali v. Ali Hussain Johar*, 15 C. W. N. 353, referred to. *SIVAPRASAD RAM v. TRICOMDAS COVERJI BHOJA* (1915) . . . I. L. R. 42 Calc. 926

2. ————— “Suit for land or other immoveable property”, construction of—*Letters Patent, 1865, cl. 12—Trespass—Compensation for wrong to land—Wrongful cutting and removal of coal—Civil Procedure Code (Act V of 1908), s. 16—Civil Procedure Code (Act VIII of 1859), s. 5—Venue.* The expression “suits for land or other immoveable property” in cl. 12 of the Charter of 1865 cannot be construed as being limited to suits for the recovery of land in its strict sense, but must be construed as extending to a suit for compensation for wrong to land, where the substantial question is the right to the land. *SUDAMDIH COAL Co., LD. v. EMPIRE COAL Co., LD.* (1915). I. L. R. 42 Calc. 942

3. ————— *Suit to enforce mortgage of land partly in Sonthal Parganas and partly in local jurisdiction of Bhagalpur Court—Jurisdiction of Bhagalpur Court—Sonthal Parganas Settlement Regulation (III of 1872), ss. 5 and 6—Sonthal Parganas Act (XXXVII of 1855), s. 2—Sonthal Parganas Justice Regulation (V of 1893), Part 2 and s. 10—Consent of parties to jurisdiction of a Court—Usury provision relating to, in s. 6, Regulation III of 1872—Question of Jurisdiction not taken in High Court—Scheduled Districts Act (XIV of 1874).* In a suit in the Court of the Subordinate Judge of Bhagalpur, to enforce a mortgage bond for principal and interest amounting to over 5 lakhs of rupees, by far the greater portion of the mortgaged property was situated in the Sonthal Parganas, and the mortgagors resided in that district the rest of the property being situated within the local jurisdiction of the Bhagalpur Court. The mortgage bond was exe-

JURISDICTION—contd.

cuted at Bhagalpur, and contained a stipulation that the mortgagees might enforce it in the Bhagalpur Court. The suit was instituted on 20th June 1904. On an objection taken that the Bhagalpur Court had no jurisdiction to entertain the suit:—*Held*, on an examination and consideration of the Acts and Regulations applicable to the Sonthal Parganas, that at the date the suit was commenced no suit would lie in any Court established under the Bengal Civil Courts Act (VI of 1871) or under the Bengal United Provinces, and Assam Civil Courts Act (XII of 1887) which has taken its place, in regard to any land, or any interest in, or arising out of land, but such suits must have been brought before Settlement Officers, or in Courts of Officers appointed under s. 2 of the Sonthal Parganas Act (XXXVII of 1855), and the Sonthal Parganas Justice Regulation (V of 1893), Part 2, so long as the land had not been settled, and the settlement declared by a notification in the Calcutta Gazette to have been completed and concluded. And, it being found that the land included in the mortgage in suit had not been wholly settled, the suit came within the provisions of s. 5 of the Sonthal Parganas Settlement Regulation (III of 1872), and was excluded from the jurisdiction of any but the special officers or Courts appointed under s. 2 of Act XXXVII of 1855, and therefore the Bhagalpur Court not being one of the special Courts had no jurisdiction to try it. The stipulation in the mortgage bond to the effect that the mortgagees might enforce it in the Bhagalpur Court was of no effect. As the suit was one with regard to land in the Sonthal Parganas which the Bhagalpur Court had no jurisdiction to entertain, the parties could not by consent give the necessary jurisdiction to the Court. To allow them to do so would be to nullify the express provisions of s. 5 of Regulation III of 1872, which was binding on any Court having jurisdiction in the Sonthal Parganas in the exercise of such jurisdiction. *Held*, also, that apart from the question of jurisdiction, any Court dealing with the subject matter of the suit would be bound to give full force and effect to the provisions of s. 6 of Regulation III of 1872, relating to usury, and therefore to refuse to decree any compound interest arising from any intermediate adjustment of interest, or a total amount of interest exceeding the principal of the original debt or loan. This provision of s. 6 was not one of procedure, but of substance, and so far as the Courts having jurisdiction within the Sonthal Parganas are concerned, it places all contractual stipulations as to compound interest in a position of non-enforceability, and limits statutorily the total interest which can be decreed on a loan or debt. The question of jurisdiction which depended on no disputed facts, was in issue in the suit, and had been adjudicated upon in the first Court, was one which their Lordships were of opinion they could not decline to entertain though not specifically raised on the appeal, especially as it necessarily presented itself in argument. *Semle*: The provisions of the Scheduled Districts Act (XIV of 1874) have never

JURISDICTION—concll.

been extended to the Southal Parganas. *Maha Prasad Singh v Ramay Mohan Singh* (1914)
I. L. R. 42 Calc. 116

4. ——— *The Sute Valuation Act (VII of 1887), s. 8—Suit to eject a tenant holding over—Court Fees Act (VII of 1870), s. 7, cl. (xi) (cc)—Madras Civil Courts Act (III of 1873), s. 14* The effect of amendment of s. 7 of the Court Fees Act (VII of 1870) by adding to it cl. (xi), (cc) is that a suit to recover immovable property from a tenant is governed for purposes of jurisdiction by s. 8 of the Sute Valuation Act (VII of 1887), and not by s. 14 of the Madras Civil Courts Act (III of 1873), so that in the case of such suits the valuation for purposes of jurisdiction is the same as for court fees. *Chalasawmy Ramiah v Chalasawmy Ramaswami* 11 Mad L. J. 155, distinguished *Seshagout Row v Narayanaswami Naidu* (1914)
I. L. R. 38 Mad. 795

5. ——— *To entertain suit after remand—Suit originally tried by District Judge, after remand tried with consent of parties by Subordinate Judge—Irregular assumption of jurisdiction no objection.* Where a suit valued at Rs. 1,308 was heard in the first instance before the District Judge and dismissed as barred by limitation, but on appeal the High Court remanded it for trial on the other issues, and thereafter the

Judge to transfer the case, the transfer was authorised by s. 24 of the Civil Procedure Code. But if the remand order was interpreted to have directed the District Judge himself to try the suit, it was

that ground on appeal, and it was immaterial that as a consequence of such trial appeal from his decision on facts lay before the District Judge and not before the High Court. *Protat Chandra Roy v Jidunstin Das* (1914) 19 C. W. N. 143

JURISDICTION OF CIVIL COURT.

See Madras Estates Land Act (I of 1905), s. 8 I. L. R. 33 Mad. 608
See Pensions Act (XXIII of 1871), ss. 4, 5, 6 I. L. R. 37 All. 339

JURISDICTION OF CIVIL AND REVENUE COURTS.

See Madras Estates Land Act (I of 1905), s. 8.
I. L. R. 33 Mad. 603, 643

JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF MAGISTRATES.

JURISDICTION OF MAGISTRATES.

See CRIMINAL PROCEDURE CODE (ACT V of 1895), s. 141
I. L. R. 33 Mad. 459

JURISDICTION OF REVENUE COURT.

See Madras Estates Land Act (I of 1905)
I. L. R. 33 Mad. 33

JURY.

See CRIMINAL PROCEDURE CODE, 1895, s. 133 I. L. R. 37 All. 26
See PARDON I. L. R. 42 Calc. 856

JURY TRIALS.

See REFERENCE I. L. R. 42 Calc. 763

JUSTIFICATION.

See PENAL CODE (ACT XLV of 1860), ss. 40, 79
I. L. R. 33 Mad. 773

K**KALIGHAT TEMPLE.**

See PALAS OR TEMPLES OF WORSHIP
I. L. R. 42 Calc. 455

KASBATIS.

History and status of Kasbatis in Gujarat—Ahmedabad Telegraphs Act (Bombay Act VI of 1862)—Gujarat Telegraphs Act (Bombay Act VI of 1853)—Bombay Land Revenue Code (Bombay Act V of 1879), ss. 68, 73—Rights of Kasbatis after reversion to and annexation by British Government—Rights of tenants from Bombay Government—Ours of goods on claimant of rights of permanent tenure—Lease implies no obligation to renew at end of term—Obligations to give up possession at end of lease. In this case the Lordships of the Judicial Committee held (reversing the judgments of the Courts below) that the respondent, the descendant of a family of Kasbatis who were in possession of a village called Charoll in the district of Ahmedabad in Gujarat at the date of the creation of that district by the transfer to the British Government, and whose predecessors in title held thereafter under leases from the Government, were mere tenants of the Government of Bombay, bound to give up, at the end of each term of lease, possession of the village, and were never legally entitled as each lease terminated to have a new lease granted to the last lease or regrantation, and therefore never acquired permanent possession of the village. The only legal enforceable right the Kasbatis could have as against the British Government were those and those only, which that Government by agreement expressed and, or by law claim to those to confer upon them. The relation in which they stand to their native sovereign and the consideration of the existence, nature and extent of their rights before

KASBATIS—concl'd.

the cession were only relevant matters for the purpose of determining whether and to what extent the British Sovereign had recognized their ante-cession rights, and had elected or agreed to be bound by them. The burden of proving that they had any such rights which the Bombay Government consented to their continuing to enjoy rested upon the respondent. The principle laid down in *The Secretary of State for India in Council v. Kamachee Boye Sahaba*, 7 Moo. I. A. 476, and *Cook v. Sprigg* [1899] A. C. 572, followed. The just and reasonable inferences to be drawn from the evidence were that the respondent had failed to discharge the onus on her; that the Bombay Government had never by agreement express or implied conferred upon her or any of her ancestors the proprietary rights in, or ownership of, the village claimed by her; they never conferred upon any of the lessees of the village a legal right to insist, at the termination of the lease, upon a new lease being granted; they were never under a legal obligation to grant any lease of the village, and the granting or withholding of a lease rested solely in their discretion. The mere repetition of acts of grace by the Government could not *per se* create a legal right to their continuance. *Primâ facie* a lease for a term does not import any right to a renewal of : on the contrary it *primâ facie* implies that the lessees' right to the premises ends with the term. There was no analogy between holdings of the Grassias and the Kasbatis; they and the Mewassies were clearly distinguishable from the Kasbatis. The Ahmedabad Taluqdars Act (Bombay Act VI of 1862) did not apply to Kasbati lessees. They never were Ahmedabad Taluqdars in the true sense: they did not lose their ancient rights of ownership of land by taking leases as did the Grassias and therefore did not suffer the injustice which the statute was designed to remedy. The effect of ss 68 and 73 of the Bombay Land Revenue Code (Bombay Act V of 1879) read with the Gujerat Taluqdars Act (Bombay Act VI of 1888) is that a lessee whether a true Taluqdar, or a Thakur, Mewassie, Kasbati, or Naik, is bound by the terms of his lease, one term of which is that he shall only occupy for the term of years for which a lease for years is granted, and *primâ facie* no longer. SECRETARY OF STATE FOR INDIA *v.* BAI RAJBAI (1915)

I. L. R. 39 Bom. 625

KHORPOSH GRANT.

Sub-soil right. The interest of a *khorphoshdar* heritable in the male line was a limited interest liable to be defeated at any time by the failure of heirs and thereupon resumable by the proprietor for the time being, and would not be an interest sufficient to carry with it the sub-soil rights. BISWANATH GORAIN *v.* SURENDRA MOHAN GHOSE (1913)

19 C. W. N. 102

KIDNAPPING.

See PENAL CODE (ACT XLV OF 1860), ss. 366 AND 372.

I. L. R. 37 All. 624

KING'S PREROGATIVE OF PARDON.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 42 Calc. 739

KNOWLEDGE.

See PROBATE . I. L. R. 42 Calc. 480

KNOWLEDGE AND INTENT.

See PENAL CODE (ACT XLV OF 1860), s. 86 . . . I. L. R. 38 Mad. 479

_____ of contents—

See ATTESTATION OF INSTRUMENT.
I. L. R. 37 All. 350

KUDIVARAM.

_____ acquisition of—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8, EXCEP.
I. L. R. 38 Mad. 843

_____ right to—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8 (EXCEP)
I. L. R. 38 Mad. 608, 843

_____ sale of—

See LIMITATION ACT (IX OF 1908), s. 22.
I. L. R. 38 Mad. 837

L**LACHES.**

See HUNDI SHAH JOG.
I. L. R. 39 Bom. 513

LAMBARDAR AND CO-SHARER.

See AGRA TENANCY ACT (II OF 1901), s. 164 . . . I. L. R. 37 All. 595

LAND ACQUISITION ACT (I OF 1894).

_____ ss. 9, 18, 25—Effect of omission of owner to state his claim under s. 9—Reference under s. 18—Limitation of powers of Judge. The facts that there had been previous negotiations between the Government and a person whose land the Government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under s. 9 of the Land Acquisition Act, 1894, nor relieve the owner from the consequence of such omission as set forth in s. 25. NARAIN DAT *v.* THE SUPERINTENDENT OF DEHRA DUN (1914)
I. L. R. 37 All. 69

_____ ss. 18, 30—

See MORTGAGE . I. L. R. 42 Calc. 1146

_____ ss. 31, 32—Debutter lands—Status of shebait—Order for deposit of compensation money, there being no person competent to alienate the lands. Where certain lands dedicated to an idol were acquired under the Land Acquisition Act and the application of the shebait for payment of the

LANDLORD AND TENANT—*contd.*3. ENCROACHMENT—*concl'd.*

as A's tenant, it was not found that the disputed land was over in A's possession or that it was included in the area settled by A with C, but C appeared to have encroached upon the land in such circumstances as to raise a presumption that the encroachment would enure to A's benefit and become an accretion to C's holding under A: *Held*, that though A might perhaps be described as C's *de facto* landlord, it could not be said that the land was settled with C by A, and there is nothing in the Full Bench decision to prevent B from suing to recover possession from A and C. *TEPU MAHAMMAD v. TEFAYET MAHAMMAD* (1915)
19 C. W. N. 772

4. ESTOPPEL.

Estoppel—Tenant admitted into possession, if may deny landlord's title and set up a different title derived from stranger. A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. *BILAS KUNWAR v. DESBAJ RANJIT SINGH* (1915)

I. L. R. 37 All. 557
19 C. W. N. 1207

5. IMPROVEMENTS.

Tenancy, determination of—Improvements, non-removal of during tenancy—Right to them or their value after determination of tenancy—Transfer of Property Act (IV of 1882), s. 108 (h). The plaintiff's husband took a house site on lease from the predecessor in title of the first defendant in 1883. After 1883 and before 1st May 1898 the plaintiff built a house thereon to the knowledge of the landlord and the lease was renewed by the first defendant on 1st May 1898 in plaintiff's favour who thereby agreed to vacate the land on a month's notice. While the plaintiff was in possession under that lease, the first defendant filed a suit in ejectment in the Small Cause Court, Madras, and though the present plaintiff then set up the claim now advanced, *viz.*, a right to the superstructure built by her or its value, she was ordered without the determination of the right set up by her, to deliver possession of the land on or before the 26th February 1907, and on her failure to do so the first defendant was put in possession on that date. On the 1st August following, the first defendant gave the plaintiff notice to remove the superstructure within a fortnight. She did not do so but in 1908 instituted the present suit for (a) a declaration that she was the owner of the house built by her and for its possession or (b) in the alternative to be paid compensation for it or (c) if that was not granted, to be allowed to remove the superstructure. *WALLIS J.*, holding that the plaintiff was not entitled to any of the reliefs dismissed the suit. *Held* on appeal, confirming the judgment of *WALLIS, J.* (*SANKARAN NAIR, J.*, dissenting), that the plaintiff

LANDLORD AND TENANT—*contd.*5. IMPROVEMENTS—*concl'd.*

was not entitled to any of the reliefs asked for. *Held* by the Court, that the landlord was not estopped from disputing the plaintiff's right, if any, by the mere fact that the house was erected with his knowledge and without any protest by him. *Held* (*WHITE, C. J.*, dissenting), that the tenant was, for the purpose of removing her superstructure, entitled to a reasonable time after the determination of the tenancy whether it is by act of parties or by the order of Court. *Held* by *MILLER, J.*, that the tenant having been given ample time to remove the building after giving up possession through Court she was not entitled to any further time. *Per WHITE, C. J.*—S. 108, clause (h) of the Transfer of Property Act, governed the case and the tenant was not entitled to remove the buildings after the termination of the tenancy. *Per SANKARAN NAIR, J.*—S. 108 of the Transfer of Property Act is only an enabling section and it did not take away the pre-existing right of the tenant to compensation or to remove building even after the termination of the tenancy if he is not given compensation. The new lease having recognised the tenant's ownership in the house, the plaintiff's ownership thereto cannot be defeated by her failure to remove the house within a reasonable time and as such failure cannot effect a transfer of ownership, all that the landlord was entitled to was an option to retain the building and pay compensation for it or to restore the land to its old condition by removing the building and claim damages. *Per MILLER, J.* The recognition by the landlord for the period of the new tenancy, of the tenant's property in the building has no other necessary effect than to prevent the landlord from treating the building as having been surrendered to him at the end of the previous term and it was only a piece of evidence of a contract to allow the removeable fixture to remain as such upon the land for the new term. *Ismail Kani Rowshan v. Nazarali Sahib, I. L. R. 27 Mad. 211*, referred to. English and Indian Case Law on the subject, considered. *ANGAMMAL v. ASLAM SAHIB* (1913) . I. L. R. 38 Mad. 710

6. INAM LANDS.

Inam Register—Object of mentioning the tax payable for the land—Inam authorities, duties of—Right of melvaramdar to trees in case of lands which were topos at the Inam Settlement. In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been a tope consisting of trees the melvaramdar has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation, the portion due to melvaramdar being determinable according to the evidence. The incidents of the tenure of a tenant under an inamdar are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to

LANDLORD AND TENANT—*contd.*6 IN AM LANDS--*cont'd*

fix the quit rent payable to Government by the
 Inamdar Bodda Godeppa v The Moharaja of
 Vijayagram, I L R 3 Mad 105, Janappa
 Appa Rao v Kadiyala Ratnam, I L R 13 Mad
 219, Iyyarai Narasanna I L 15 Mad 47,
 Narayana Iyyangar v Orr I L R 6 Mad 52,
 and Kallurda Ibbappa v Raja Lenkata Pappayya
 Rao, I L R 3 Mad 21, butin, Subba Set
 RAJAGOPALSWAMI THELIER JAGANNADHA PA
 DIJARI (1913) I L R 38 Mad 155

7 RESULT

1 Adjustment of account between landlord and tenant—Was a bail—
Portion of a count due on adjustment kept in deposit
with tenant for payment to superior landlord—
Such a count if continues to be rent and if recover-
able as such—Limitation Act (13 of 1905) Sec 1
Art 115 The plaintiff was the landlord and the
defendant the tenant. There was an adjustment
of accounts between them as regards rent in 1312
B 5, the adjustment being embodied in a wast
bail, and the defendant was bound liable to pay
a certain amount out of which Rs. 130 2 was left
with the defendant as a deposit for payment to
the superior landlord on account of rent payable
by the plaintiff to the latter and the balance was
stated as payable to the plaintiff. The defendant
did not make the payment to the superior landlord
who sued the plaintiff and obtained a decree
against him for the amount due from him. The
plaintiff thereupon sued the defendant to recover
the rent for the years 1313 to 1316 and the amount
which he had to pay to the superior landlord with
interest. Held that the wast bail showing that
the amount which was to be paid to the superior
landlord was left in deposit with the defendant it
must be held that there was a discharge for this
portion of the rent. The assignment was no party
to the contract but if as the contract allowed
the amount was left in deposit with the defendant
for payment to a third party and it amounted
to a discharge so far as that portion of the rent was
concerned the amount so left in deposit ceased
to be rent and recoverable as such and Art 115
of the Limitation Act was applicable to the case.
See also Misra v. Bhojra Bhojra (1913)

2. — — — — — *Lease on con-*
struction—Tenant never put in possession of actual
of a leased land—Leaseholder's payment of full
rent—but for rent—It is suspension of rent,
if sustainable—Held—If not owned. Where
a tenant who has not been put in actual possession
of a portion of the leased land nevertheless went
on paying the full rent agreed to in the lease
in a suit for recovery of arrears of rent by the
landlord: *Held* that the tenant cannot in such
circumstances claim suspension of rent, but the
rent payable to the landlord was liable to al-
terment. *Amalgamated Property, 13 C 11 A.*

LANDLORD AND TENANT—cont. 4

7 RENT—contd

702 followed SARADA PRASAD BHATTACHAKJEE
 & RAJ MONMATHA NATH MITTER (1914)
 19 C. W. N. 870

8 TITLE

Dispute between as to possession of property put—Onus of proof—First is necessity of proving dispute of land—Has land either than certain—Tenure or holding—Lease to a tenant to cultivate—Lands cultivated of your land if the cadar—Tuccador a possess on of land una de tucua of adlerce to landlord The owner of a tucua is entitled to recover possession of lands within it, unless the defendants whom he sues can prove a subordinate interest that derogates from his title The fact that he has failed to prove certain specific titles which he in addition asserted in the disputed lands, does not deprive him of this in law presumption in his favour The onus which is on the defendants must be discharged by them The fact that the defendants were ravais does not

Mohi n Chandro S C H V 185 did not apply to this case in which the defendants held a number of separate holdings and did not claim to be the land in suit as part of any specific holding. Where a ticcadar took a lease of lands far exceeding 100 bighas in area to cultivate by sowing indigo or other crops either by means of his cultivation or through tenants. Held that it was a tenure. A tenure-holder does not become a raiyat with respect to all land that came into his direct possession, because the leaseholder was free to cultivate those lands. A proprietor may hold other lands besides a raiyat's lands in his possession, and because he recovers possession of lands on the basis of the presumption arising from his proprietorship it does not follow that the land a raiyat does not due the fact that he fails to prove the land to be his prevent him from claiming the land of the defendant fails to establish a balance interest in it. Where the plaintiff is a proprietor certain persons with whom he had an arrangement to be taken possession of his lands, the ticcadar possession of his lands does not bind him adversely to the plaintiff. MANICK v. BHAKTAN HOOD (1874)

LAND REGISTRATION ACT (BLDG VII CF
1878)

On 78-10188 sent - Document for
reconsideration of the same and the time
limitation period expired. Where
a suit filed by reason of registration of the
plaintiff's name under Act VII of 1906, a 10,
but registration was obtained using the name
of the plaintiff's agent, the 11th Court on
second appeal denied the case to be closed.

LAND REGISTRATION ACT (BENG. VII OF 1876)—concl'd.

s. 78—concl'd.

of by the Trial Court on the merits, it appearing that no portion of the claim was barred on the day when the land registration was really taken. The plaintiffs were directed to pay the costs of the defendants of the original trial, and were not allowed costs of either Court of Appeal. *CHULLAN SINGH v. MADHO SINGH* (1915) 19 C. W. N. 794

LAND REVENUE CODE, BOMBAY (BOM. V OF 1879).

s. 10—

See *MANLATDARS' COURTS ACT, BOMBAY* (BOM. II OF 1906), s. 23.

I. L. R. 39 Bom. 552

ss. 65, 66—*Possession of land as owner for fifty years—User of land as graveyard and also as timber depôt—Order by Government for discontinuing the user as timber depôt—Order ultra vires—Land Revenue Code (Bom. Act V of 1879). ss. 65, 66.* The plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs paid no assessment on the land. In 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land. The lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and that the suits were barred under Article 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed: *Held*, that as the land in dispute was not used for the purpose of agriculture, neither s. 65 nor s. 66 of the Land Revenue Code (Bom. Act V of 1879) applied to the case, and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultra vires*. *RASULKHAN HAMAD-KHAN v. SECRETARY OF STATE FOR INDIA* (1915).

I. L. R. 39 Bom. 494

Chap. XII—

See *CRIMINAL PROCEDURE CODE (ACT V OF 1898)*, s. 191 (1) (c).

I. L. R. 39 Bom. 310

LEADING QUESTIONS.

See *CHARGE*. I. L. R. 42 Calc. 957

LEASE.

See *MADRAS ESTATES LAND ACT (I OF 1908)*, s. 42, CL. (a) AND (b) AND 2.

I. L. R. 38 Mad. 524

See *STAMP ACT (II OF 1899)*, s. 59, SCH. I, ART. 35, CL. (a), SUB-CL. (iii).

I. L. R. 37 Bom. 434

See *TRANSFER OF PROPERTY ACT (IV OF 1882)*, s. 10

I. L. R. 38 Mad. 867

See *TRANSFER OF PROPERTY ACT (IV OF 1882)*, s. 108 (j)

I. L. R. 37 All. 144

by wife, repudiation of—

See *TRANSFER OF PROPERTY ACT (IV OF 1882)*, s. 10.

I. L. R. 38 Mad. 867

construction of—

See *RESUMPTION*.

I. L. R. 39 Bom. 279

forfeiture of—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)*, O. XXII, R. 10.

I. L. R. 39 Bom. 568

of palmyra juice—

See *REGISTRATION ACT (III OF 1877)*, s. 17 (1), ETC.

I. L. R. 38 Mad. 883

repudiation of—

See *LIMITATION ACT (XV OF 1877)*, SCH. II, ART. 91

I. L. R. 38 Mad. 321

Reclamation of—Rent if enhancible beyond the maximum fixed. When land was let out for purposes of reclamation to be effected by the lessees at their expense, though the lessors also undertook to make a contribution thereto, and was to be held for the first four years without rent which was thereafter to be progressive till a maximum was reached, and there was no provision for a further rise, the reasonable inference to draw from these circumstances was that the parties intended that when the specified maximum was reached, there would be no further increase. *KATYAYANI DEBI v. PORT CANNING AND LAND IMPROVEMENT Co.* (1914) 19 C. W. N. 56

LEASE IN PERPETUITY.

validity of—

See *MUTT, HEAD OF*.

I. L. R. 38 Mad. 356

LEAVE TO APPEAL TO PRIVY COUNCIL.

Application—Civil Procedure Code (Act V of 1908) s. 110—Computation of time—Limitation Act (IX of 1908) s. 12, whether ultra vires—Legislative powers of the Governor-General in Council—Order in Council, 1838—Government of India Act, 1858 (21 & 22 Vict. c. 106) s. 64—Indian Councils Act, 1861 (24 & 25 Vict. c. 67)—Letters Patent, 1865, ss. 39, 11. S. 12 of the Limitation Act of 1908 applies to applications for leave to appeal to His Majesty in Council. S. 12, sub-cl. (2) which enacts that "in com-

LESSOR AND LESSEE—concl'd.

purposes, gives a sufficient cause of action to the lessor to bring the suit in ejectment, and it is not necessary that the lessor should do some act showing his intention to determine the lease before he brings his suit in ejectment. *Venkata-ramana Bhatta v. Gundaraya*, I. L. R. 31 Mad. 403, distinguished. *Padmanabhayya v. Ranga*, I. L. R. 34 Mad. 161, followed. *Per SADASIVA AYYAR, J.* As the breach of the condition gives rise to a cause of action at once, there is strictly no question of election between two different rights but there is only an election whether the lessor is to retain the right created by the breach or to give up the right. The retention requires no definite physical act while the waiver does. *KORAPALU v. NARAYANA* (1913)
I. L. R. 38 Mad. 445

LETTERS OF ADMINISTRATION.

See ADMINISTRATOR-GENERAL'S ACT (II OF 1874), SS. 20, 52, 54.
I. L. R. 38 Mad. 1134
See PROBATE AND ADMINISTRATION ACT (V OF 1881), s. 50.
I. L. R. 37 All. 380

LETTERS PATENT, 1865.

See AMENDED LETTERS PATENT.

— cl. 12—

See JURISDICTION. I. L. R. 42 Calc. 942

— cl. 15—

See APPEAL. I. L. R. 42 Calc. 735

— cl. 26—Review of criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate-General. *KING-EMPE-ROR v. UPENDRA NATH DASS* (1914)
19 C. W. N. 653

— cl. 32—

See ARREST OF SHIP. I. L. R. 42 Calc. 85

— cls. 39, 44—

See LEAVE TO APPEAL TO PRIVY COUNCIL. I. L. R. 42 Calc. 35

LIABILITY.

See BILL OF LADING. I. L. R. 38 Mad. 941

See VARTHAMANAM. I. L. R. 38 Mad. 660

LICENSE.

See EASEMENTS ACT (V OF 1882), SS. 59 AND 60. I. L. R. 37 All. 91

See TRADE-MARK. I. L. R. 42 Calc. 262

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 108 (j).
I. L. R. 37 All. 144

LIFE ESTATE.

See JAIGIR. I. L. R. 42 Calc. 305

LIFE INTEREST.

See HINDU LAW—WILL. I. L. R. 42 Calc. 561

LIGHT AND AIR.

See EASEMENT. I. L. R. 42 Calc. 49

LIGHTERS OR BOATS.

See BILL OF LADING. I. L. R. 38 Mad. 941

LIMITATION.

See CHEQUE, PAYMENT BY. I. L. R. 42 Calc. 1043

See CIVIL PROCEDURE CODE (1908), s. 48. I. L. R. 37 All. 638

See CRIMINAL PROCEDURE CODE, s. 476. I. L. R. 37 All. 344

See DECREE NISI. I. L. R. 39 Bom. 175

See DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901), SS. 2, 46 AND 167.
I. L. R. 39 Bom. 600

See EXECUTION OF DECREE. I. L. R. 37 All. 527

See EXECUTION PROCEEDINGS. I. L. R. 37 All. 518

See HINDU LAW—INHERITANCE. I. L. R. 42 Calc. 384

See HINDU LAW—MORTGAGE. I. L. R. 42 Calc. 1068

See INJUNCTION. I. L. R. 42 Calc. 550

See LIMITATION ACT (XV OF 1877).

See LIMITATION ACT (IX OF 1908).

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 62. I. L. R. 37 All. 40, 233

See MADRAS LAND ENCROACHMENT ACT (III OF 1905) I. L. R. 38 Mad. 674

1. — Application made out of time, entertained by Court without adjudication of question of limitation—Revision by High Court. Where the Court entertained an application which on the face of it was time-baired without adjudication of the question of limitation it acted with material irregularity in the exercise of its jurisdiction, and the High Court could in such a case interfere in revision, though it might not do so if the Court had considered the question of limitation and decided it erroneously. *TARA SANKAR GHOSH v BASIRUDDI* (1915)
19 C. W. N. 970

2. — Admission in a previous suit of liability for a debt—Debt barred at the date of admission—No estoppel from pleading, in a subsequent suit—Plea of limitation, agreement against or waiver of—Estoppel against an act of the legislature—Difference between the English and the Indian law—Limitation Act (Act IX of 1908), s. 3, arts. 74, 75, 80 and 120—Instalment bond—Default in payment of instalments, meaning

LIMITATION—*contd.*

cf.—Tender by debtor—Refusal of acceptance by creditor, no default—Haver. The plaintiff released his interest in a certain business in favour of the defendants for a consideration of Rs. 30,000, for which the defendants executed to the plaintiff on the same date (12th December 1901) a promissory note payable by monthly instalments of Rs. 1,000, the whole sum being recoverable in the event of three successive defaults. After sixteen instalments were paid, the plaintiff refused to receive further instalments tendered by the defendants but brought a suit in August 1906 to set aside the release deed on the ground that it had been obtained by fraud. The suit was dismissed and, on appeal, this dismissal was confirmed on 19th January 1910. In the Appellate Court an oral application was made on behalf of the plaintiff that a decree might be passed in that suit for the amount of the balance of the instalments. The defendants stated in the Court of Appeal that they were always ready and willing to pay the amount but pleaded that no decree could be passed in that suit for the amount and the Appellate Court refused to pass a decree for the same. The plaintiff then made a demand on the defendants on 25th January 1910 for the balance of the instalments due on the promissory note and on refusal by the defendants brought the present suit. The defendants pleaded the bar of limitation. The Trial Judge held that the defendants who had admitted their liability for the amount in relating the plaintiff's application in the previous suit were estopped (though not under s. 115 of the Indian Evidence Act) on general principles of law and equity from pleading that the suit for the amount of the instalments was barred by limitation. The defendants appealed. *Hd* (on appeal), that the defendants were not estopped from pleading that the suit was barred by limitation. *Rangappa Appa Rau v. Narasimha Appa Rau*, 1 L. R. 19 Mad 416. *Khetri Mahan Chatterjee v. Mohun Chandra Das* 17 C. B. N. 518, referred to. *Dishachala Navkar v. Varada Chitkar*, 1 L. R. 25 Mad 55, and *Baiy Nath Ram Gornak v. Harn Chander Har*, 10 C. B. N. 929 distinguished. *Mohammed Ziaur el Akbar v. Mussunt Thakurine Bitta Har*, 11 M. J. 146, explained. There can be no estoppel against an act of the Legislature. *Jayabandhu Saha v. Hindu Krishna Pal* 1 L. R. 36 Cal 90, and *Hd* *Att v. Anantha Murli* 1 L. R. 35 Cal 532, referred to. Under the Indian law parties cannot waive or contract themselves out of the law of limitation. Art. 75 of the second schedule of the Limitation Act (Act IX of 1908) is not applicable to the case because there was no default within the meaning of the article on the part of the defendants in the payment of the instalments but there was only a refusal on the part of the plaintiff to receive the instalments tendered by the defendants. Art. 74 of the Limitation Act, as it stood art. 120 was applicable to the case and accordingly the suit as to nine out of the sixteen instalments was barred by limitation. Difference between the English and the Indian law as to the plea of

LIMITATION—*contd.*

limitation pointed out. *Per WHITE, C. J.* Assuming there was default, the plaintiff waived the benefit of the provision when he repudiated the agreement which gave him the benefit of the provision. *Per OLDFIELD, J.*—Here also none of completed payments for which the debtors have not been responsible, can't be treated as equivalent to the default referred to in the first column of art. 75. Where there is no default in payment the question of waiver of the benefit of the provision for immediate payment does not arise. Art. 75 must be held applicable only to the class of suits in which a default has occurred and in which the provision as to waiver may be material. Article 74 is the more general article and is applicable to this case. *SITHARAMA v. KRISHNAIAH* (1913) 1 L. R. 38 Mad 374.

3. *Limitation Act* (IX of 1908), Sch. I, Art. 124—(Act XV of 1877), Sch. II, Art. 124—*Hereditary office of shabastan—Successor of shabastan when bound by decree against predecessor in shabastan—Decree holder and purchaser at sale in execution who by reason of his estate is not competent to hold office of shabastan—Adverse injury propagation of temple income by trespasser incompetent to be shabastan—Trespasser's possession not constituting unlawful holder shabastan—Is judicial.* This was an appeal from the decision of the High Court in the case of *Jharala Das v. Saldadhar Thakur*, 1 L. R. 33 Cal 547, in which the widow of the shabastan of a temple (the shabastan of which were Brahmin Pandas) who succeeded her deceased husband in that office, mortgaged land together with her interest in the income of the temple to the defendant (who was not a Brahmin). The defendant obtained a decree on his mortgage on 24th September 1900, in execution of which he put up for sale the share of the temple income purchased by himself, and got delivery of possession in 1902. The widow died in May 1900. In a suit brought on 24th January 1910 for the land and mesne profits, and for a declaration that the plaintiff was entitled to receive the share of the temple income as it was in alienation the defence was that the suit, so far as it related to the temple income, was barred by the decree judgment as by law then. *Hd*, by the Judicial Committee (reversing the decision of the High Court) that Art. 124 of the Limitation Act was not applicable. The suit was not one for an hereditary office which could not be held by a person who was not a Brahmin, and the defendant was therefore not competent to hold the office of shabastan, and had not taken possession of it. By adversely taking and appropriating to his own use a share of the regular daily income from the offerings, the defendant acquired neither, and no right to a share of that income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shabastan was entitled, the defendant committed a fresh act of trespass in respect of which a suit could be brought against him by the shabastan; but it did not seem that the shabastan for the time being, or effect in any way

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7. _____ Preliminary Motion—Servant—Limitation Act IV of 1908, Sec. 1, Arts. 164, 165—Application for sale of mortgaged property under Lien—Transfer of Property Act IV of 1908, ss. 55 to 56—Civil Procedure Code Act I of 1908, O. IIIIV, rs. 4, 5. In this case the Jurisdiction of the Judicial Committee affirmed the decision of the High Court in Dwivedi Chandra Prasad v. Sarda Chander Dwivedi, I. L. R. 35 Cal. 919, that an application for an order absolute for sale under a mortgage decree is an application "to enforce a judgment or decree" within the meaning of Art. 165 of Sec. 1 of the Limitation Act IV of 1908, and is therefore barred if not made within the period prescribed by that Article. Mysal Lal Puriar v. Sarda Chander Dwivedi, (1934) . . . I. L. R. 49 Cal. 776.

8. _____ Registration Act
XXX of 1913, s. 7—Thirty days after passing of
 decree under—Registration of for the purpose of
 this section—Civil Procedure Code Act 7 of 1908.
 O. XX. n. 7. For the purposes of s. 7 of the Regis-
 tration Act (XXX of 1913) the period of thirty
 days within which a document has to be present-
 ed for registration after the passing of a decree of
 Court directing its registration, is to be reckoned
 not from the date the decree bears but from the
 date it was actually drawn up and signed by the
 Judge. Per Curiam. It is desirable that in
 decrees of this nature the Judge should put the
 date on which they are signed by him under O. XX.
 n. 7. Civil Procedure Code Act 7 of 1908. Mo-
 ment. Curiam v. SURESH SETHI 1913

TERMINATION AGE BY 1957.

SE. 7 and SE. 8 Art. II—In order to be
guardian of the property of the wards, members
of the committee should follow—SE. 7 by law it is
also three years after their majority but within
three years of the passage of the act.
In England according to SE. 7 and SE. 8 Art. II
of the Education Act, IV of 1877, a suit brought
by two trustees of an unincorporated school is timely to
set aside an allocation by their guardian more
than three years after the date attained majority
is claimed by limitation not only as regards the date

LIMITATION ACT (XV OF 1877)—*contd*s. 7—*contd*

brother a share but also in respect of the younger brother's though the latter attained his majority within three years prior to the institution of the suit. *DURAISAMI SETHUPATHI v. NONDAMANI SALUVAN* (1911.) I L R. 38 Mad. 118

Sch. II, Art. 12—

See *MUTT, HEAR OF*

I L R. 38 Mad. 358

Art. 38, 115 and 120—*Contract to sell another's goods without authority, breach of—Cause of action only in contract and not in tort as on misrepresentation—Contract Act (IX of 1872), s. 235* A suit against a person for breach of contract to sell to the plaintiff certain goods of another on the unphleg representation that he had authority from his principal to sell them, when in fact he had none, is not one arising in tort or independent of contract but one arising out of and incident to a contract and is governed by Art. 115 of the Limitation Act (XV of 1877) and not by Art. 38 or 120. S. 235 of the Contract Act, discussed. *VAIRAVAN v. AVICHA* (1913) I L R. 38 Mad. 275

Art. 91—*Undue influence—Lease, suit to set aside, on the ground of—Plausibility of the Article—Suit for possession—Whether setting aside lease by decree of Court necessary—Rescission of lease by the plaintiff, if sufficient—Suit for setting aside lease is barred, suit for possession also barred—Trusts Act (II of 1852), ss. 80, 81, 90, 91 and 96—Transfer of Property Act (II of 1882), s. 120—Contract Act (IX of 1872), ss. 61 and 66—Custom of inalienability in a zamindari case of proof as to—Evidence, nature of—Where the plaintiff sued in 1906 to recover possession of certain lands which had been leased by his deceased father under two registered lease deeds, dated 6th November 1883 and 2nd June 1883 respectively to the deceased father of the defendants on the ground that the leases were obtained by undue influence exercised by the father of the defendants on the plaintiff's father, and the father of the defendants had died in 1883. Held that the suit was barred by limitation under art. 91 of the Limitation Act (XV of 1877). A transfer which is voidable and which can be effected only by a registered instrument can be avoided only by a final order of transfer or by a decree of Court. *Janki Kumbhar v. Jit Singh* I L R. 15 Cal. 51, explained and applied. S. 80 of the Indian Trusts Act, even if it were applicable to the case, is not available to the plaintiff because there was no allegation in the plaint that a notice of rescission was given to the defendants or that latter before the suit and the suit does not operate as a notice to the defendants unless a copy of the plaint was served on them after the suit was duly instituted. The defendants' title is not not barred at the date of the suit, as the right to mediate possession had not then vested in the plaintiff by virtue of the said section. S. 80 and 91 of the Indian Trusts Act are not applicable because*

LIMITATION ACT (XV OF 1877)—*contd*Sch. II—*contd*Art. 91—*contd*

s. 96 of the said Act will operate to prevent the application as it enacts that in all actions under Chapter IX of the Trusts Act (which contains ss. 81 and 82) can be created in cases in the provisions of any law. *Per VADAPATI AYYAR, J.*—A unilateral expression of a rescission of a contract by one of the parties to the contract does not release him from his obligation to have the contract rescinded by Court under the substantive law of the land and within the time allowed by the statutory law, if he wants, as plaintiff, the assistance of the Court in obtaining certain reliefs on the basis that the contract has ceased to exist. The whole phrase 'hold the property' (s. 81, Trusts Act) or 'held the advantage' (s. 82, Trusts Act) for the benefit of the transferee does not create at once an enforceable as distinguished from an enforceable trust in favour of the transferee. Property in the hands of a mere constructive trustee does not become the property of the beneficiary under the constructive trust so as to enable him to treat it as such without a judicial declaration of trust. A defendant, though his right to bring a suit for rescission of a contract or lease may be barred, might be permitted to defend his possession of properties by showing that the contract or lease so voidable at his instance has been repudiated by him. *Lakshmi Bai v. Janki Bai*, I L R. 30 Mad. 169, referred to. The untenability of proving inalienability in the case of a zamindari lease on the person who alleges it. *Sundaram v. Sundaram* I L R. 16 Mad. 311, distinguished from a perpetual lease reserving rent to the Zamindar except a sum which was payable wholly to the Government towards the revenue due on the leased lands is really an absolute conveyance of the properties. The case law on the subject reviewed. *Raja Raghaviah Iyer v. Arava Chellam Chettiar* (1913) I L R. 38 Mad. 321

Art. 120—*Suit by co-tenants for recovery of partition—General rule—Rights of land—Suits for partition—Suits for partition—A trustee of a public trust has a right to sue on the trust property for the purpose of realising a loan of advances properly made by the trust and art. 120 and not art. 132 of the Limitation Act (XV of 1877) is the one applicable also to a suit for recovery of a loan made by the trustee to a co-tenant and accrue before the date on which the judicially declared to be a trustee or a land trustee (though it may well be that it does not accrue till he is declared to be the trustee or the land trustee). *Per J. H. B. J. J.* *Mad. 17 v. Sundaram Ayyar* (1913) I L R. 38 Mad. 322. The effect of a suit in which a person is joined as a trustee unnecessarily results in a suit to be the trustee can be shown as a trustee of the trust property. The time runs in defending such a suit as the trustee's title when he counterclaims as a trustee of the trust.*

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II—*contd.*Art. 120—*contd.*

bursement of the expenses made by him but only a claim to remain in possession for such expenses cannot be deducted in his favour under s. 14 of the Limitation Act. *Maharajah Jugutendur Bunwaree v. Din Dyal Chatterjee*, 1 W. R. 309, followed. *Per SADASIVA AYYAR, J.*—Art. 61 is applicable only to an ordinary suit for a simple decree for money but not for a suit where the prayer of the plaint is for recovery of the plaint amount out of the income of and on the liability of certain properties. Art. 120 is the proper article applicable, and the right of suit does not begin until the trustee is dispossessed. A trustee has not only got a right to reimburse himself out of the rents and profits of the trust property, but has also a charge thereon including its *corpus*, which can be enforced only by an order prohibiting any disposition of the trust property, without previous payment of expenses properly incurred by him. He is not entitled to enforce his right by a sale of the trust property. A person, who is a *de facto* trustee, but who *bona fide* thinks himself to be *de jure* trustee, is entitled to reimbursement of all expenses properly encumbered by him, just like a *de jure* trustee. Even a *de facto* trustee or a trustee *de son tort* is entitled to be reimbursed for all the necessary expenses in respect of the trust estate. *Obiter*: A trustee is entitled to remain in possession until he is reimbursed in respect of all proper charges incurred by him. *ANKAN SAHIB v. SORAN BIVI SAIBA AMMAL* (1913) . . . I. L. R. 38 Mad. 260

— Arts. 120, 125—*Applicability of*—*Suit by one adopted later to set aside his maternal grandmother's alienation after her death—Attestation and ratification by next presumptive reversioners to a female's alienation, effect of.* A Hindu widow sold the suit properties in 1881 and 1889 and died in 1899. Her daughter adopted the plaintiff in 1903 and he sued in 1907 to set aside the sales during the life-time of his adoptive mother. *Held* that (a) the suit was not barred, (b) art. 120 and not 125 of the Limitation Act was applicable and (c) the cause of action for the plaintiff to question sales arose only from the date of his adoption when alone he became a reversioner. Of the two sales in this case, the first was assented to by the daughters and attested by the next male reversioner; the second was acquiesced in by the daughters and in 1894 ratified by the then presumptive male reversioner. *Held*, that the plaintiff was estopped under the circumstances from questioning the sales as a reversioner. For the application of art. 125 of the Limitation Act, (a) the suit must be one brought during the life-time of the alienating female and (b) the plaintiff must be the person entitled to the possession of the land if the female died at the date of the institution of the suit. *Chiruvolu Punnamma v. Chiruvolu Perrazu*, I. L. R. 29 Mad. 390, explained and distinguished. *Gajjala Veerayya v. Gajjala Gan-gramma* 1912 Mad. W. N. 912, *Abinash Chandra*

LIMITATION ACT (XV OF 1877)—*concl'd.*Sch. II—*concl'd.*Art. 120—*concl'd.*

Mazumdar v. Harinath Shah, I. L. R. 32 Calc. 62, 71, and *Govinda Pillai v. Thayammal*, I. L. R. 28 Mad. 57, followed. *Per SADASIVA AYYAR, J.* Consent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing. Effect of attestation by a reversioner to a female's alienation considered. *NARAYANA v. RAMA* (1913) . . . I. L. R. 38 Mad. 396

Arts. 120, 132—

See HINDU LAW—MORTGAGE.

I. L. R. 42 Calc. 1068

Arts. 142, 144—

See MUTT, HEAD OF.

I. L. R. 38 Mad. 356

Art. 146-A—

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

Art. 164—

See LIMITATION ACT (IX OF 1908), SCH. I
ART. 164. . . I. L. R. 37 All. 597

Art. 179—

1. ———— *Limitation Act (IX of 1908), Sch. I, Art. 182—Civil Procedure Code (Act XIV of 1882), ss. 351 and 357—Decree on mortgage—Application for execution—Mortgagor's petition for declaration of insolvency—Opposition by mortgagee judgment-creditor—Step-in-aid of execution—Limitation.* An application by mortgagee judgment-creditor in execution of his decree, opposing the insolvency proceeding of the mortgagor judgment-debtor, is a step-in-aid of execution under Art. 179, Sch. II of the Limitation Act (XV of 1877), and Art. 182, Sch. I of the Limitation Act (IX of 1908). *LAXMIRAM LALLUBHAI v. BALASHANKAR VENIRAM* (1914)

I. L. R. 39 Bom. 20

2. ———— *Execution, step-in-aid of—Application, oral, for adjournment.* An application to take a step-in-aid of execution under Art. 179 of the Limitation Act need not be in writing. *Amar Singh v. Tika*, I. L. R. 3 All. 139 and *Moneklal Jagjivan v. Nasia Raddha*, I. L. R. 15 Bom. 405, followed. An application by the decree-holder for an adjournment to enable him to produce records or evidence necessary to effectively conduct the execution proceedings further is an application to get an order in aid of execution. *Sheshdasacharya v. Bhimacharya*, 14 Bom. L. R. 1204, *Haridas Nanabhai v. Vithaldas Kisandas*, I. L. R. 36 Bom. 638, *Pitam Singh v. Tota Singh*, I. L. R. 29 All. 301, and *Kunhi v. Seshagiri*, I. L. R. 5 Mad. 141, referred to. *ABDUL KADER ROWTHER v. KRISHNAN MALAYAL NAIR* (1913)

I. L. R. 38 Mad. 695

LIMITATION ACT (IX OF 1908)—*contd.*s. 10—*concl'd.*

the credit in the name of C, being specific, s. 10 of the Limitation Act did apply. *Held*, further, that the plaintiffs were entitled to succeed on the ground not only that their claim did not fall within Article 14 and would be within time if it fell within Art. 120, but that it was one to which the bar of limitation could not be pleaded. SECRETARY OF STATE FOR INDIA *v.* BAPUJI MAHADEO (1915) . . . I. L. R. 39 Bom. 572

s. 12—

See LEAVE TO APPEAL TO PRIVY COUNCIL. I. L. R. 42 Calc. 35

s. 15 (2)—

See LIMITATION . I. L. R. 38 Mad. 92

s. 18—*Conditions to be fulfilled before invoking section—Application for setting aside sale on the ground of fraud—Fraud subsequent to sale if necessary to be established.* S. 18 of the Limitation Act provides that where a person having a right to make an application has by means of fraud been kept from the knowledge of such right of the title on which it is founded the time limited for making the application against the person guilty of the fraud or accessory thereto shall be computed from the time when the fraud first became known to the person injuriously affected thereby. Consequently whoever desires to avail himself of s. 18 has to establish in the first place that there has been fraud; and in the second place that by means of this fraud he has been kept from the knowledge of his right to make an application, but it is not essential to prove that there has been fraud subsequent to the date of sale. JATINDRA MOHAN RAI CHAUDHURI *v.* BROJENDRA KUMAR DATTA (1914). 19 C. W. N. 553

s. 19—

1. *Acknowledgment of debt.* A letter to the effect that the writers "after looking into the account will sign it" is not an acknowledgment of liability on an account stated within the meaning of s. 19 of the Limitation Act. BHAIRO PRASAD *v.* GOJADHAR PRASAD SAHU (1914) 19 C. W. N. 170

2. *Acknowledgment of plaintiff's title in statement of boundary of neighbouring land in kabuliyat executed by defendant in favour of third party.* Where in stating the boundaries of lands included in a *kabuliyat* executed by the defendant in favour of a third party, he described the land in suit as plaintiff's: *Held*, that the statement amounted to an acknowledgment within the meaning of s. 19 of the Limitation Act. It is now settled that an acknowledgment, to whomsoever made, if it be an acknowledgment pointing with reasonable certainty to the liability in dispute or the right out of which that liability arises as a legal consequence is an acknowledgment of liability within the meaning of that section. Maniram Seth *v.* Seth Rupchand 10 C. W. N.

LIMITATION ACT (IX OF 1908)—*cont'd.*s. 19—*concl'd.*

874: s. c. I. L. R. 34 Calc. 1047, Majumdar *v.* Desai Narasim, 17 C. W. N. 573, Iman *v.* Baij Nath, I. L. R. 33 Calc. 613, and Majumdar *v.* Iyasawmy Moodaliar *v.* Yeo Kay, I. L. R. 11 801, considered. GURU CH. SAHA *v.* SUREN KRISTA RAY CHOWDRI (1913). 19 C. W. N.

ss. 19, 21—*Debt contracted by co-parcener for no immoral purpose—Infant's bound—Limitation—Acknowledgment of debt karta if binds infant—Acknowledgment, if not expressed as made by karta.* The karta of a Hindu family of which the defendant was a co-parcener was an agent duly authorised on behalf so as to give an acknowledgment under 19 of the Limitation Act of a debt contracted by the Defendant's father for other than an immoral purpose. The decisions in *Wajibun v. K. Buksh*, I. L. R. 13 Calc. 292, and *Chhato Rai Billo Ali*, 3 C. W. N. 13, to the contrary are inconsistent with the provisions of s. 21 of Act of 1908 are no longer good law. Such an acknowledgment need not be expressed as made in capacity of karta. *Chinnaya Nayudu v. Gurunath Chetty*, I. L. R. 5 Mad. 169, followed. HAR P. SAD DAS *v.* BAKSHI HARIHAR PRASAD SINGH (1914) 19 C. W. N. 5

s. 20—

See CHEQUE, PAYMENT BY. I. L. R. 42 Calc. 10

s. 20, Proviso—

See PRESIDENCY SMALL CAUSE COURT ACT (XV OF 1882), s. 69. I. L. R. 38 Mad. 4

ss. 20, 57, Sch. 1, Art. 57.—*Suit, money payable for money lent—Payment of interest saving limitation—Creditor's discretion to use money received to oldest debt—Second appeal—Order of evidence (bahi khata) at hearing.* The plaintiff brought a suit on the 28th May 1909 for money due on an adjustment of accounts. The plaintiff alleged that the last adjustment took place within three years from the date of the institution of the suit when the defendant promised to pay. The Courts below dismissed the suit. The District Judge in appeal however found that the defendant took a loan of Rs. 50 from the plaintiff on 21 June 1906, but he refused to give a decree for the amount, because the defendant paid Rs. 52 in 1907, although he believed the plaintiff's statement and evidence to be genuine, and there was a time of payment over Rs. 700 due from the defendant. In the High Court at the time of the hearing of the appeal the plaintiff produced an entry in his *bahi khata* showing that Rs. 1100 was paid by the defendant on account of interest in 1907. *Held*, that a creditor cannot take the benefit of s. 20 of the Limitation Act unless he can show that the payment was made in discharge of interest as such: there must be an express declaration by the debtor at the time of the payment.

LIMITATION ACT (IX of 1908)—*contd*s. 20—*concl'd*

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under s. 20 and as in the case of a
for may exercise his discretion and apply any
money paid to him by the debtor in discharge of
the oldest debt and the lower Appellate Court
was in error in treating the Rs. 32 as a repayment
of the recent loan of Rs. 50 That the High Court
did not receive the entry in the plaintiff's books

of the lower Court. *MUTARI RAM & SONS v. THE
(1913) 19 C. W. N. 237*

s. 22—

Mortgage—Sale
of one of the
addition of
s. 22 Ono
K., a Mahomedan, effected a simple mortgage in
favour of V on the 23rd of June 1899, the mort-
gage debt becoming due on demand which was
made on the 1st January 1900 K. having died,
a suit for sale of the mortgaged property was
instituted by V against his minor son as a party
in possession of the property on the 23rd of June
1911 The minor guardian having alleged that
K. left other heirs, a widow and two daughters,
applied on the 29th of January 1912 to have them
added as parties and they were so added on the
12th February 1912 It was contended by the
added defendants that the suit was barred as
against them under s. 22 of the Limitation Act,
1908 This plea found favour with the lower Court
and the suit for sale was dismissed so far as the
shares of the added defendants were concerned
On appeal to the High Court by the mortgagee
Held, that the money was specifically charged on
the whole mortgaged property and the property
was liable to be sold in satisfaction of the mort-
gage in priority to the satisfaction of any interest
derived from the mortgagee subsequent to the
date of the mortgage The suit as originally filed
was not instituted to enforce claims against shares
in the property of heirs, it was to enforce a mortgage
lien in
of any
parties
the dismissal of the suit was in error
(the Limitation Act (IX of 1908) *Guruswamy v. D. Lalray,*
I. L. R. 25 Bom. 11, followed. VIRCHAND LAL
KARANSHEET & SONS (1915)

I. L. R. 39 Bom. 729

2 *Transference of*
party from one category to another The rule that a
party transferred from the class of the defendants
to that of the plaintiffs is not a new party to whom
the provisions of s. 22 of the Limitation Act apply
is an absolute rule *DRABKA NATH DAS & MOH-*
MOHAN TAYADAM (1915) 19 C. W. N. 1269

LIMITATION ACT (IX OF 1908)—*contd*

s. 22, Cl. s (1) and (2)—

See CIVIL PROCEDURE CODE (ACT V OF
1908), O. XXI, r. 63

I. L. R. 38 Mad. 535

s. 22, Art. 12, Cl. (b)—Madras Rent Re-
covery Act (I of 1865), ss. 33, 35, 39 and 40—
Sale for arrears of rent—Sale of kudiaram right—Suit
to set aside sale—Parties to the suit—Purchaser,
necessary party—Receiver of melvarams, added as
supplemental defendant—Lapse of one year—Suit
not barred—Execution sales—Proceedings to set aside
—Decree holder, necessary party—Civil Procedure
Code (Act I of 1908), O. XXI, rr. 50, 91 and 93
In a suit instituted under the Madras Rent Re-
covery Act, by the owners of the kudiaram right
in certain lands to set aside a rent sale of the
kudiaram right, the purchaser at the rent sale
and the melvarams were originally joined as
defendants, but on objection taken by the defen-
dants a receiver appointed on behalf of the mel-
varams was added as a supplemental defendant
more than one year after the date of the sale
The defendants thereupon pleaded that the suit
was barred by limitation *Held*, that in a suit
under the Act neither the receiver nor any of the
melvarams was a necessary party to the suit
but only the purchaser at the rent sale and that
consequently the suit was not barred by limita-
tion under s. 22 and art. 12, cl. (b) of the Limitation
Act In proceedings under the Civil Procedure
Code to set aside a sale in execution of a decree,
the decree holder is a necessary party. *ANNAMALAI*
v. MENUGARAI (1914) I. L. R. 38 Mad. 837

s. 23—

See MADRAS ESTATES LAND ACT (I OF
1903), s. 192 *I. L. R. 38 Mad. 655*

s. 23, Art. 47—Suit to recover posses-
sion of lands—Magistrate, order of, under Criminal
Procedure Code (Act V of 1893), s. 145—Order
passed without proper inquiry—Notice not legally
served on the plaintiff—Plaintiff aware of pro-
ceedings—Order not without jurisdiction—Appli-
cability of Art. 47—Tenant for a term—Landlord
treating tenant as a trespasser after the expiry of
the term—Subsequent registered notice to quit—

Aiyar v. Sankarappa Narlu & Sons (1915)
followed Where the defendants were treated
for a term under the plaintiff and continued in
possession of the lands after the expiry of the
term but the plaintiff did not treat the defendants
as tenants holding over but as trespassers and
the date of the expiry of the term, and the sub-
stantial order under s. 145 of the Code of Criminal

LIMITATION ACT (IX OF 1908)—*contd.*s. 28—*concl'd.*

Proceedure was passed in the defendant's favour subsequent to the said date. *Held*, that the suit for recovery of possession of the lands brought by plaintiff more than three years after the said order was barred under art. 47 of the Limitation Act. *Tukaram v. Hari*, I. L. R. 28 Bom. 601, *Bapu bin Mahadaji v. Mahadaji Vasudeo*, I. L. R. 8 Bom. 348, and *Wise v. Ameerunissa Khatom*, I. L. R. 7 I. A. 73, referred to. *Bolai Chand Ghosal v. Samiruddin Mandal*, I. L. R. 19 Calc. 616, distinguished. *PARASURAMAYYA v. RAMACHANDRUDU* (1913). I. L. R. 38 Mad. 432

Sch. I, Arts. 12, 95, 166—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 47 AND 50.

I. L. R. 38 Mad. 1076

Art. 14—*Possession of land as owner for fifty years—User of land as graveyard and also as timber depôt—Order by Government for discontinuing the user as timber depôt—Order ultra vires—Land Revenue Code (Bom. Act V of 1879), ss. 65, 66.* The plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs paid no assessment on the land. In 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land. The lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and that the suits were barred under Art. 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed: *Held*, that as the land in dispute was not used for the purpose of agriculture, neither s. 65 nor s. 66 of the Land Revenue Code (Bom. Act V of 1879) applied to the case, and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultra vires*. *Held*, further, that the suits were not barred by Art. 14 of the Limitation Act (IX of 1908), inasmuch as it was not necessary for the plaintiffs to have the order set aside. *RASULKHAN HAMADKHAN v. SECRETARY OF STATE FOR INDIA* (1915). I. L. R. 39 Bom. 494

Arts. 29, 36, 49—

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

Arts. 29, 62 and 120—*Attachment of debt—Wrongful seizure of moveable property—Suit*

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I—*contd.*Art. 29—*concl'd.*

by claimant to the debt against the decree-holder—Article, applicable. Neither attachment of a debt nor voluntary payment of it into Court, constitutes seizure of moveable property under legal process within the meaning of art. 29 of the Limitation Act. A suit by a claimant to the debt attached against the decree-holder to whom the amount of the debt was paid is governed by either art. 62 or 120. *Narasimha Rao v. Gajapathi*, I. L. R. 31 Mad. 131, distinguished. *YELLAGODAL v. AYYAPPA NAICK* (1914)

I. L. R. 38 Mad. 972

Art. 42—

See INJUNCTION. I. L. R. 42 Calc. 550

Art. 44 or 144—

See HINDU LAW—GUARDIAN.

I. L. R. 38 Mad. 1125

Arts. 48 and 49—*Suit for goods misappropriated—Indian Contract Act (IX of 1872), ss. 108 and 178.* One K took a jewel of the plaintiff in May 1907, to find a purchaser for it, stating that he would settle the price in the presence of the plaintiff; but instead of doing so, K in June 1907 pledged it with the third defendant who *bona fide* lent, on its security Rs. 175. Plaintiff came to know of K's conversion in 1907 and in 1911 for the jewel or its value, the third defendant and the widow and son of K who died at the end of 1907. *Held*, that Art. 48 and not 49 of the Limitation Act (IX of 1908), was applicable and that the suit was not barred by limitation. *Held*, also that the *bona fides* of the third defendant does not preclude the plaintiff from recovering the price without paying the third defendant the amount of loan. Effect of ss. 108 and 178 of the Indian Contract Act, considered. *SACHCHIDANANDAN v. MANIA CHETTIAR* (1914). I. L. R. 38 Mad. 742

Art. 60—*Limitation—Suit for money deposited with banker—The Limitation Act, 1908, that a suit for the recovery of money deposited with a banker and payable on demand is governed by Art. 60, and not by Art. 59, of the first schedule to the Act.* *B. S. v. Ganga Devi*, I. L. R. 37 All. 422

I. L. R. 37 All. 422

Art. 62—

See EQUITY AND TRUSTS—*Trusts*

Act (1908) V of 1908, s. 1

I. L. R. 31 Mad. 131

1. In all cases where a person is entitled to a share of the property of a deceased person, the Limitation Act, 1908, applies. *Held*, that the Limitation Act, 1908, applies to a suit for a share of the property of a deceased person.

LIMITATION ACT (IX OF 1908)—*contd*Sch. I—*contd*Art. 62—*contd*

execution thereof brought the mortgaged property to sale on the 1st of May, 1906, and purchased it themselves for a sum slightly in excess of the amount of the decree and costs. The decree holders auction purchasers paid in the excess and got possession. On the 1st of June, 1912, the remaining heir sued to recover her share in the mortgage money, or, in the alternative, a share in the property purchased. *Held*, that the plaintiff had no cause of action so far as the property was concerned, and that as to the money her suit was barred by art. 62 of the first schedule to the Indian Limitation Act, 1908. *Mahomed Habib v. Mahomed Amer*, 1 L. R. 32 Cal. 527, followed. *Umardas Ali Khan v. Hidayat Ali Khan*, 1 L. R. 19 All. 163, and *Mahomed Riasat Ali v. Hana Banu*, 1 L. R. 21 Cal. 157, referred to. *Amiya Bili v. Naji v. Nissa* (1915)

I. L. R. 37 All. 233

2. — *Limitation—Suit for money had and received—Suit by heir to recover share of inheritance from person appointed to wind up estate* Where, pending arbitration in respect of the distribution of the estate of a deceased person amongst his heirs, the estate was by their consent put in charge of a third party who was to realize the assets and pay the debts, it was *held* that a suit by one of the heirs to recover from such person her share by inheritance was a suit for "money had and received" and was governed by art. 62 of the first schedule to the Indian Limitation Act, 1908. *Mashur Din v. Entiaz v. Nissa Bili* (1914)

I. L. R. 37 All. 40

3. — *Limitation—Succession certificate obtained by one of the heirs of a deceased person—Suit by remaining heir for recovery of her share* A certain Mahomed in the year 1903 obtained a succession certificate to realize debts due to his deceased uncle and realised some of those debts. In the year 1913 the widow of his brother, who had died subsequent to the death of his uncle, brought the present suit for her husband's share of the money realised. *Held*, that Art. 62 of the first schedule to the Indian Limitation Act, 1908, governed the suit, and as no money had been realised by the holder of the succession certificate within three years of the suit, it was barred by limitation. *Amiya Bili v. Naji v. Nissa Bili* 1 L. R. 37 All. 233, *Parsooram Rao v. Tantra* 1 L. R. 37 All. 314, *Mahomed Ali v. Hidayat Ali Khan*, 1 L. R. 37 All. 40, *Mahomed Habib v. Mahomed Amer*, 1 L. R. 32 Cal. 527, followed. *Umardas Ali Khan v. Hidayat Ali Khan*, 1 L. R. 19 All. 163, distinguished. *Abdul Ghaffar v. Naji v. Nissa Bili* (1915)

I. L. R. 37 All. 424

4. — *Suit for refund of consideration money where there is a total failure of consideration* Where there is total failure of consideration with regard to a

LIMITATION ACT (IX OF 1908)—*contd*Sch. I—*contd*Art. 62—*contd*

lease, a claim to a refund of the consideration money is governed by Art. 62 of the first schedule of the Limitation Act. *Biswanath Ghosh v. Surendro Mohan Ghosh* (1913) 19 C. W. N. 120

Arts. 62 and 97—*Sale of land by one having a voidable title and putting purchaser in possession thereunder—Dispossession by person entitled to avoid—Cause of action for return of purchase money, only on dispossession* A who had a title to certain immovable property voidable at the option of C sold it to B and put B in possession thereof. C then brought a suit against A and B, got a decree and obtained possession thereof in execution. *Held*, that B's cause of action for the return of

Act Cases on the subject reviewed. *Srinivas v. Rajagopala* (1914) 1 L. R. 38 Mad. 557

Art. 62, 120—*Separate Hindu family—Property managed by one member—Receipt of money by that member—Suit for partition* Three brothers who had been living with their father as a joint Hindu family obtained under the will of their father, in whose hands it was separate property, a considerable amount of movable and immovable property. The property bequeathed was divided by the will into three lots, but the legatees still continued to live as a joint Hindu family and the property of all was managed for a series of years by one member of the family acting as if he were the *karta* of a joint Hindu family. *Held* on suit by the widow of one of the members of the family to recover from the manager her deceased husband's share of money received by the defendant as manager but owned by all the three members of the family in equal shares that the suit was not a suit for money had and received, but was one to which Art. 120 of the first schedule to the Indian Limitation Act applied. *Parsooram Rao Tantra v. Radha Bai* (1911)

I. L. R. 37 All. 318

Art. 63—*Death of principal—Agency of another person if he is not an agent—Agency of another person if he is not an agent—Agency of another person if he is not an agent* The death of the principal terminates the agency. Where on the death of the principal, the agent continues the service of his successor in interest. *Held*—That a new agency not governed by the original contract was created. Where, under such new arrangement, parties agreed that account should be submitted from year to year, a suit against the agent would not be governed by Art. 113 but by Art. 63 of Sch. I of the Limitation Act. *Enna v. Barada Kumar*, 11 C. L. J. 13, not followed.

LIMITATION ACT (IX OF 1908) - 1908.

Sch. I—correct.

Art. 182--cont'd.

one formal order. There was no appeal against the decree by which the plaintiff was directed to pay costs to two of the defendants and the fact that there was an appeal against an entirely different decree which was recorded in the same document did not affect the question of limitation when no order that could have been passed in that appeal could possibly have affected the decree sought to be executed. *LAW v. BHANUJIB PRAKASH CHOWDHURY* (1911) . 19 C. W. N. 237

-- --- **Art. 183—Revival of decree of Original Side of the High Court—Revival of decree operative to one only of two judgment-debtors, not operating as revival against the other.** A revival of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment-debtors in the case does not keep the decree alive so as to enable the decree-holder to execute it against the other judgment-debtor after twelve years from the date of the decree.

McLAREN v. VEERIAH NAIDU (1915)

I. L. R. 38 Mad. 1102

Art. 181—

See MADRAS DISTRICT MUNICIPALITIES ACT
(IV OF 1881), s. 163.

I. L. R. 3S Md. 450

See MUNICIPAL COUNCIL.

I. L. R. 38 Md. 6

LIMITED COMPANY.

See PART I LEASE.

I. L. R. 12 Cal. 1039

LIQUIDATED DAMAGES.

See INTERNAL. . I. L. R. 42 Cal. 692

See AS-16544 OF A COPY, 1-2-1944
I. L. R. 38 344 21

See CIVIL PROCEDURE CODE (Act No. 1908), O. XXI, p. 66.

I. L. B. 22 111 5.4

See TRANSACTIONS OF PARLIAMENTARY AFFAIRS, 1952, p. 32. L. L. P. 35 3341. 154

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(let XII) of 17th Dec. 1871, the
of notice, of an entry made in the
for arrears of rent, & the
calculator of the said arrears, & the
personal engagement, & the
setting aside the same, & the
J.D. by purchase of the same, & the
remainder of a property, & the
the property, & the
C. the purchase of the same, & the
that had entered into the same, & the
a decree, & the
assisted all the parties, & the
to certain amounts, & the
The same, & the

LIS PENDENS—*continued*.

of 1819 for non payment of rent and F who was the executor to the estate of his deceased father who was *dar putnadar* under C deposited the arrears for saving the *dar-putni* interest from the effect of the sale and obtained possession as mortgagee. The *putnadar* interest in the *putni* was then sold in execution of a money decree and purchased by S. The trustees appointed by D took out execution and the *putni* was fixed for sale. F instituted a regular suit for a declaration that the decree under execution was not a rent decree and for a perpetual injunction upon the decree-holders not to execute the same against the *putni mahal*. The suit was decreed by the first Court but dismissed by the High Court on the 8th April 1908. F applied for leave to appeal to the Privy Council which was granted on the 30th June 1908. The trustees applied for the sale of the *putni mahal* and they impleaded C alone as judgment-debtor. The sale took place on the 6th July 1908 and the property was purchased by F in his personal capacity. For setting aside the sale, an application under s. 311, Civil Procedure Code, was made by S as also by F as executor to the estate of his deceased father. F also made an application

Privy Council was subsequently delivered on the 4th March 1914 and it was held that the suit instituted by F should have been decreed. *Held*, that the facts were sufficient to attract the appli-

though they were not bound to issue notice on S, the purchaser of the *putni* interest, whose suit failed, whom they were not willing to treat as the legal representative of C and against whom they did not want to execute the decree. That non service of notice under s. 248, Civil Procedure Code, was not a mere irregularity and vitiated the sale. *Rajkumath Das v. Sunder Das*, 15 C. W. N. 1038, followed. That the auction purchase of the *putni* was made by F in his personal capacity and he was not debarred from applying under s. 313, Civil Procedure Code, for setting aside the sale. *Moharaj Bahadur Singh v. Sundarra Narain Singh* (1914). 19 C. W. N. 132

LOCAL CUSTOM.

See RAILWAY RECEIPT.

LOCAL GOVERNMENT.

— delegation of powers to—

See PENAL CODE (ACT XLV OF 1900).
ss. 188 AND 203.

L. L. R. 38 Mad. 602

LOCAL GOVERNMENT RULES.

See PENAL CODE (ACT XLV OF 1900).
ss. 188 AND 203. L. L. R. 38 Mad. 602

LUNACY ACT (XXXV OF 1858).

— Scope of enquiry under

sanity at the time of the enquiry, there is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind and the finding of the District Judge in the lunacy proceedings did not carry things back further than the enquiry which commenced in November 1901, and notwithstanding the result of that enquiry, the burden still rested on the plaintiffs of showing that N was of unsound mind on the 16th September 1906—the date of the execution of the lease. That N being of unsound mind at the time of the execution of the lease, it created no title in the defendant which barred the plaintiffs' right to possession. That even if lunacy at the date of the execution of the lease was not established, the transaction could not stand, as it did not appear that the lease was explained to N, a *pardanashah* lady of weak intellect, and was understood by her. *Held* (as to the contention that apart from lunacy the transaction would be voidable and not void and could not be avoided by any one but N and in a suit to which her manager was a party), that the receivers were competent plaintiffs even if the lease was not void but voidable. That even if a lunatic's manager can sue, still there is no established rule of practice in the Calcutta High Court that requires suits relating to the lunatic's property to be brought by him and not by the lunatic. On the contrary the Code of Civil Procedure contemplates suits by persons of unsound mind whether so adjudged or not. It is true that a person so incapacitated has to sue by a next friend, but a next friend is not a party and the absence of a next friend in the present suit was immaterial. That, in any case, as the objection did not affect the merits of the decision of the lower Court, under s. 29 Civil Procedure Code, it was not a ground for reversal of that decision. *CASSIM MANOOJI v. H. H. DUTT* (1914). 19 C. W. N. 45

LURKING HOUSE TRESPASS.

See PENAL CODE (ACT XLV OF 1900).
s. 450. L. L. R. 37 All. 395

M**MADRAS ACTS.**

— 1864—II.

See MADRAS REVENUE & RECOVERY ACT.

— 1865—VII.

See MADRAS IRRIGATION CHARGES ACT.

MADRAS ACTS—concl'd.

1865—VIII.

See MADRAS RENT RECOVERY ACT.

1873—III.

See MADRAS CIVIL COURTS ACT.

1876—I.

See MADRAS ASSESSMENT ACT.

1882—V.

See MADRAS FOREST ACT.

1884—IV.

See MADRAS DISTRICT MUNICIPALITIES ACT.

1884—V.

See MADRAS LOCAL BOARDS ACT.

1895—III.

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

1900—I.

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

1904—III.

See MADRAS CITY MUNICIPAL ACT.

1905—III.

See MADRAS LAND ENCROACHMENT ACT.

1908—I.

See MADRAS ESTATES LAND ACT.**MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876).**

s. 2—"Owner" under, meaning of—*Permanent lessee, not an owner—Non-liability to separate registration and assessment—Proprietor or owner under Regulation (XXV of 1802)—Madras Hereditary Village Offices (Act III of 1895).* Grantees, holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of jodi, kattubadi or poruppu, are not liable to have their lands separately registered and to have separate assessment imposed upon them, under the provisions of the Madras Act I of 1876. A permanent lessee is not included in the term "owner" as used in section 2 of the Madras Assessment of Land Revenue Act (I of 1876). A permanent lessee is not a proprietor or owner under Regulation XXV of 1802 or the Madras Hereditary Village Offices Act (III of 1895). *Venkateswara Yettiappah Naicker v. Alagoo Mootloo Servagaren*, 8 Moo. I.A. 327, *Hari Narayan Singh v. Sriram Chakravarti*, L. R. 37 I. A. 136, *Durga Prasad Singh v. Brojo Nath Bose*, L. R. 39 I.A. 133, and *Kshetrabaro Bissoyi v. Sobhanapuram Hari Krishna Nayudu*, I.L.R. 33. Mad. 341, followed. *Robert Fischer v. The Secretary of State for India*, I.L.R.

MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876)—concl'd.

s. 2—concl'd.

22 Mad. 270, distinguished. *Komalammal v. Raju Naicker*, I. L. R. 19 Mad. 308, distinguished. *MAHARAJA OF VIZIANAGRAM v. THE COLLECTOR OF VIZAGAPATAM* (1914).

I. L. R. 38 Mad. 1128

MADRAS CITY MUNICIPAL ACT (III OF 1904).

1. ————— "Final", meaning of, in section 287 (3)—*Standing Committee, whether special tribunal, or independent body—New additions to building—Whether mandamus or injunction appropriate remedy to remove them.* The plaintiff, as the owner of house and premises No. 36 in Singana Chetty Street in the City of Madras, obtained permission from the Municipality of Madras City to execute certain repairs therein. The President being of opinion that under cover of the permission granted, she had made considerable additions and alterations, made a provisional order under s. 287, clause (1) of the Madras City Municipal Act (III of 1904), directing their removal and subsequently confirmed that order under clause (2) of section 287. Any appeal by the plaintiff to the Standing Committee having proved ineffectual, she filed a suit in the City Civil Court for the issue of a perpetual injunction restraining the Corporation from demolishing the alleged additions. *Held*, that when a right and an infringement thereof are alleged, a cause of action is disclosed, and unless there is a bar to the entertainment of a suit, the ordinary Civil Courts are bound to entertain the claim; and that a suit for injunction will therefore lie. *Held*, further, that the Standing Committee cannot be held to be an independent body or a special tribunal authorised to settle finally disputes as between the taxpayers or house-owners and the Corporation of which they are the members. Instance of "Special tribunal," pointed out. *Bhai Shankar v. The Municipal Corporation of Bombay*, I. L. R. 31 Bom. 604, referred to. *Held*, also, that the word "final" in s. 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the general body of Commissioners, but not to shut out the jurisdiction of the courts. The suit was properly brought against the President as he was acting on behalf of the Corporation. *Bholaram Chowdhry v. Corporation of Calcutta*, I. L. R. 36 Calc. 671, distinguished. *VALLI AMMAL v. THE CORPORATION OF MADRAS* (1912). I. L. R. 38 Mad. 41

2. ————— *Presidency Magistrate holding an inquiry under rules framed under, not a Court under Charter Act (24 & 25 Vict., c. 104), s. 15—Jurisdiction—The Indian High Courts Act (24 & 25 Vict., c. 104), s. 15.* The High Court has no jurisdiction to revise an order passed by a Presidency Magistrate in an inquiry held by virtue of the rules framed by Government under the Madras City Municipal Act (III of 1904), whereby a Magistrate may de-

MADRAS CITY MUNICIPAL ACT (III OF 1904)—*concl'd.*

I. L. R. 38 Mad. 581

MADRAS CIVIL COURTS ACT (III OF 1873).

s. 14—

See JURISDICTION.

I. L. R. 38 Mad. 795

s. 16—

See MAPPILLAS OF NORTH MALABAR.

I. L. R. 38 Mad. 1052

s. 17—Original suit tried partly by a District Munsif—Subsequent appointment as Subordinate Judge—Decree passed by successor in the Munsif's Court—Appeal from the decree—Competency of the Subordinate Judge to hear the appeal—Disqualification under the common law and statutory law, nature of—Objection when to be taken—Waiver—Mere bias or prejudice, ground of disqualification, when—Appropriate remedy. Where a District Munsif tried an original suit in part and was promoted to be a Subordinate Judge and his successor in office as a District Munsif completed the trial of the suit and passed a decree therein, and an appeal preferred against the decree was heard and disposal of without objection, by the subordinate Judge who had tried the original suit in part *Held*, that the disposal of the appeal by the subordinate Judge was not legally invalid and ought not to be set aside by the Appellate Court. S. 17 of the Madras Civil Courts Act introduces a statutory disqualification as regards District and Subordinate Judges but is confined to the case where the appeal to be heard in the Appellate Court is against the decree or order passed by the District or Subordinate Judge himself in another capacity. S. 17 of the Madras Civil Courts Act does not make any distinction between the Judge being a nominal party or a really interested party. The interest which disqualifies a Judge must be pecuniary interest or one which involves some individual right or privilege or it must be an interest arising out of the near relationship of the Judge to a party to the cause. Mere bias or prejudice on the part of a Judge does not disqualify him in the absence of a statutory provision. Even as regards relationship to a party to the cause, a Judge was not under the common law disqualified by such relationship and it is only by statute law such a disqualification could be imposed on a Judge. Under

law also) or even to review it on appeal is the

MADRAS CIVIL COURTS ACT (III OF 1873).—*concl'd.*

s. 17—*concl'd.*

Appellate Court, if he become an Appellate Judge having appellate jurisdiction over the tribunal in which he decided the cause as Original Judge. Where there is no statutory or common law disqualification in the Judge of the Court below, an Appellate Court should not set aside the judgment of the Lower Court on the mere ground that it might have been swayed by bias or prejudice. Even in such a case unless objection was taken before the Judge of the Lower Court itself at or during the trial of the cause to his hearing the suit or appeal, the Appellate Court should not interfere except in a strong or clear case of failure of justice.

prejudice was for the superior Co. another Co. *MANOHAR SARDH (1913).* I. L. R. 38 Mad. 531

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).

See MUNICIPAL COUNCIL.

I. L. R. 33 Mad. 6

ss. 53 and 60—'Holds office' meaning of M, a District and Sessions Judge, whose usual place of business was within the Municipality of C, resided for sixty days within the Municipality of K, during the annual recess and during that period did some administrative but no judicial work. *Held*, (a) that M 'held his office' during that period, within the Municipality of K, within the meaning of s. 53 of the District Municipalities Act (IV of 1884); and (b) that a payment by him of profession tax for the half year covering the sixty days to the Municipality of K was a lawful payment which would exempt him under a 60 of the Act from liability to pay the tax again for the same half year to the Municipality of C. *Chairman, Onid Municipal v. Mooney, I. L. R. 17 Mad. 183, distinguished. MOHNEY v. Fur Municipal Council of Cuddalore (1914).*

I. L. R. 38 Mad. 879

s. 103—

See MORTGAGE. I. L. R. 38 Mad. 18

s. 103—Adverse possession against Municipality—'Lawful encroachment, meaning of—Right of Municipality to remove encroachments, etc., after title barred—Limitation Act (XV of 1877)—Limitation Amendment Act (XI of 1900). Adverse possession by a person for twelve years before the Limitation Amendment Act of 1900 came into force, of some portion of a street vested in a Municipality is sufficient to give the person a clear title as against the Municipality. Under s. 165 of the District Municipalities Act the Municipal Council is not entitled to remove the projections and encroachments is made by a person who has acquired full title to them and to the area on which the encroachments stand by adverse

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—concl'd.

s. 168—concl'd.

possession for the statutory period. *Basaveswara Swami v. Bellary Municipal Council*, I. L. R. 38 Mad. 6; s. c. 23 Mad. L. J. 478, distinguished. CHAIRMAN, MUNICIPAL COUNCIL, SRIRANGAM, v. SUBBA PANDITHAR (1913).

I. L. R. 38 Mad. 456

MADRAS ESTATES LAND ACT (I OF 1908).

Inamdar and ryot—Suit for rent in a Revenue Court—Revenue Court jurisdiction of—Landholder under s. 3, clause (5)—Estate—S. 3, clauses (2) (d) and (e)—S. 189 and schedule A, No. 8—“Landholders” wider than “owner of an estate.” An inamdar of a portion of a village, where the inam consists only of some of the lands in a village granted by a Zamindar after the permanent settlement, is a landholder under s. 3, clause (5) of the Madras Estates Land Act, though the inam may not be an estate under s. 3, clauses (2) (d) and (e) of the said Act. A suit brought by such an inamdar for arrears of rent against a ryot is cognisable by a Revenue Court under the said Act. The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act. The term “landholder” is wider than the expression “the owner of an estate,” and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer. *APPALA-NARASIMHULU v. SANYASI* (1912)

I. L. R. 38 Mad. 33

s. 3—‘Ryoti land’—‘Ryot’ Rent—*Pasture land not ryoti land—Rent for pasturing, not ‘rent’ under the Act—Ss. 189 and 77 of the Act—Suit for ejectment and recovery of pasture rent, cognisable, only by Civil Courts.* Land usually fit only for pasturing cattle and not for cultivation, i.e., ploughing and raising agricultural crops is not ‘ryoti’ land, though it may have been ‘old waste’ and a tenant of such land is not a ‘ryot’ and any amount agreed to be paid for pasturing cattle is not ‘rent’ within the definitions of s. 3 of the Madras Estates Land Act (I of 1908): hence a suit to eject such a tenant from the land or to recover the amount due for pasturage is cognisable only by a Civil Court and not by a Revenue Court, as the jurisdiction of Civil Courts exists in all cases where it has not been expressly taken away. *RAJA OF VENKATAGIRI v. AYYAPAREDDI* (1913).

I. L. R. 38 Mad. 738

s. 3, cl. (2) (c), (d) and 5—*Landholder—Grantee of a portion of melvaram in an estate, a landholder—Cultivating tenant under the grantee, a ryot.* An alienee of a part of the melvaram due from the lands which form a part of an estate’s ryoti lands is a “landholder” within the meaning of s. 3, clause 5 of the Madras Estates Land Act (I of 1908), though what he thus owns may not be an “estate” under the Act; and the tenant holding ryoti land under him for purposes of agriculture is a ryot under the Act; hence a

MADRAS ESTATES LAND ACT (I OF 1908)— concl'd.

s. 3—concl'd.

suit to eject such a tenant can be brought only in a Revenue Court and Civil Courts have no jurisdiction. *Brundavanachandra Horischandra Raja v. Ramayya*, 26 Mad. L. J. 600, followed. *VENKANNA v. SRI RAJA RAMA ROW* (1914).

I. L. R. 38 Mad. 1155

s. 3, cl. (2) (d); s. 8, excep.—*Grant of village as inam—Village composed of cultivated lands and waste lands—Grant of melvaram—Tenant of waste lands, without occupancy right—Village, an estate—Surrender by tenant—No acquisition of kudivaram by inamdar—Suit in ejectment—Jurisdiction of Civil Courts.* A village, granted as an inam in A. D. 1748, was comprised at the time of the grant partly of lands under cultivation and partly of waste lands. The waste lands were subsequently given by the inamdar for cultivation from time to time to different sets of tenants without occupancy right. The inamdar brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit. The defendant contended that the Civil Court had no jurisdiction to entertain the suit. *Held*, that the village as a whole must be considered to be an ‘estate’ within the definition of s. 3, clause (2) (d) of the Estates Land Act. Surrender by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to s. 8 of the Estates Land Act. An inamdar cannot acquire the kudivaram right by surrender from a tenant, who had himself no occupancy right in the holding. *Held*, consequently, that the Civil Court had no jurisdiction to entertain the suit. *VENKATA SASTRULU v. SITARAMUDU* (1914).

I. L. R. 38 Mad. 891

ss. 3 (7), 6, 23, 153 and 157—*‘Old waste,’ ejectment from—Onus of proving ‘old waste’ on landlord.* A landholder claiming to eject a tenant under S. 153 and 157 of Madras Estates Land Act (I of 1908) on the ground that he is a non-occupancy ryot of ‘old waste’ is by s. 23 of the Act bound to prove that the land is ‘old waste’ within the meaning of s. 3, clause (7) of the Act. If neither sub-clause (1) nor the latter part of sub-clause (2) of the definition of ‘old waste’ would apply to the facts of the case, the first part of sub-clause (2) cannot be used to prove that the land is ‘old waste’ as that refers to a state of facts subsequent to the passing of the Act, and as s. 6 of the Act vested in the tenant in possession occupancy right from the date of the passing of the Act in all ryoti lands not being ‘old waste.’ *SARAVARAYUDU v. VENKATARAJU* (1913).

I. L. R. 38 Mad. 459

ss. 3 (7), 153 and 157—*Proviso to s. 153, effect of—‘Old waste,’ tenant of—Ejectment from, grounds of.* The combined effect of s. 153 of the Madras Estates Land Act (I of 1908) even as added to by s. 8 of Madras Act IV of 1909, and of s. 157 of the Estates Land Act is that a ryot of

MADRAS ESTATES LAND ACT (I OF 1908).—
concl'd.

s. 3—concl'd.

old waste cannot be ejected on the ground of expiry of a term of lease contained in a contract entered into before the Act came into force. *ARCHAPARAJU v. RAJAH VELLGOTTI GOVINDA KRISHNAYACHENDRAVARU* (1913)

I. L. R. 38 Mad. 163

ss. 8 (except. 3), cl. (2) (d)—Inamdar—Right to kudiaram—No presumption in favour of inamdar—No distinction between zamindar and inamdar as to presumption—Surrender or abandonment of

of the kudiaram right. *Per* BADASIVA AYYAR, J.—Surrender or abandonment of the holding by the tenant, is not a case of acquisition of the kudiaram right by the landlord within the terms of the exception to s. 8 of the Estates Land Act and such land does not therefore cease to be part of the estate; consequently the Civil Courts have no jurisdiction to entertain suits in ejectment brought by inamdars against the defendants who were tenants in possession, but the plaintiffs should be returned for presentation to the Revenue Courts. *Per* SPENCER, J.—A narrow interpretation should not be placed on the word 'acquired' in the exception to s. 8, so as to exclude acquisition by an inamdar by surrender or abandonment of the kudiaram right by a tenant. *STANARAYANA v. PATAYNA* (1913).

I. L. R. 38 Mad. 608

s. 8, except. 3, s. 153, proviso. ss. 157 and 163—Shrotrindar—Right to kudiaram—Presumption as to—Acquisition of kudiaram right—

of term—No subsequent recognition by landlord as tenant, effect of— *Interresponder*. The plaintiff, who was the shrotrindar of a certain village, brought a suit in the Civil Court to eject the defendant who was a tenant of some lands forming old waste under a lease for a period of three years which had expired before the Madras Estates Land Act came into force. It was found that the defendant had no occupancy right in the holding, and that he was not recognised as a tenant by the landlord after the expiry of the period of the lease. The defendant contended that the Civil Court had no jurisdiction to entertain the suit. *Held*, that the Civil Court had jurisdiction to entertain the suit. *Per* MILLER, J.—Surrender or abandonment by the tenant is one of the modes in which the landlord can acquire the kudiaram right so as to attract the provisions of the exception to s. 8 of the Estate Land Act. When it is found that a tenant has no occupancy right in his holding and that the land is not private land, the presumption is that the occupancy right is in the landlord either by the original grant or by prior or subsequent acqui-

MADRAS ESTATES LAND ACT (I OF 1908)—
concl'd.

s. 8—concl'd.

tion. Per SPENCER, J.—The provisions of s. 153 of the Estates Land Act are not exhaustive of all possible cases of eviction; cases of eviction of tenants under leases or terms not exceeding five years are taken out of the Act by the proviso to s. 153 and consequently out of the jurisdiction of the Revenue Courts. A tenant in possession after the expiry of his term, who has not been recognised by the landlord as a tenant subsequent thereto, is a trespasser within the meaning of s. 163 of the Act, and consequently a suit in ejectment can be instituted against him in a Civil Court. *PONKESAMY PARAYACHI v. KARU EUDAYAN* (1914).

I. L. R. 38 Mad. 543

s. 42, cl. (1) (a) and (b), cl. (2)—Enhancement or alteration of rent—Lease-deed—Provision as to payment of rent on excess of area of lands found on measurement—No enhancement or alteration of rent—Previous order of Collector not required—Illegality Tenancy Act (VIII of 1855), ss. 52 and 148. The proviso found in clause 2 of s. 42 of the Madras Estates Land Act (I of 1908) which requires the order of a Collector before enhancement of rent can be allowed, does not apply to the claim of a land holder who sues to recover arrears of excess rent due under a lease-deed which contained a provision for payment of rent at a specified rate on the excess lands found on measurement over the areas specified in the lease deed. It is only where the landlord wants to enhance the rent, basing his claim on the right granted and declared by s. 42, clauses 1 (a) and (b), that he should obtain under clause 2, the order of the Collector for such alteration of rent before he could claim the al-

I. L. R. 38 Mad. 524

s. 53 (2)—Distrain for a higher rent than legally due, good for the amount legally due. S. 53 (2) of the (Madras) Estates Land Act (I of 1903) enables a Collector, in a suit to set aside a distraint to the extent of the amount legally due to the landlord by the tenant under the patta tendered by the landlord. The application of the clause is not confined to the enforceability of the proper amount of rent, in suits for rent only. *RAMKRISHNA ROW SAHIB v. VILLAMOURTHI GOUDRAY* (1914).

I. L. R. 38 Mad. 1140

ss. 54 and 78, cl. (1)—Tender of patta by a landlord to his tenant at his house—Tenant, refused to—Subsequent affidavit of patta to the tenant's house, not to his land—Tender, validity of—Methods of tender under the Act—Delivery of patta, meaning of—Household of a soldier under the Act. Where a patta was offered by a landlord to his tenant at his house but the tenant refused to receive it, and thereupon the patta was affixed to the tenant's house but not to the land

MADRAS ESTATES LAND ACT (I OF 1908)—
*concl'd.*s. 54—*concl'd.*

in his holding: *Held*, that there was no valid tender of patta to the tenant as required by s. 54 and 78, clause (2) of the Madras Estates Land Act (I of 1908). An offer of a patta to the ryot is not delivery to him. When once an offer of patta is made and refused, the tender by delivery cannot be effected, and it then becomes necessary to affix the patta to the land in the ryot's holding. If this is not done, there is no valid tender of patta. Meaning of 'tender' and 'deliver', considered. *CHINNATHAMBIAH v. MICHAEL* (1913).

I. L. R. 38 Mad. 629

ss. 77 and 189—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. I. L. R. 38 Mad. 738

s. 153 proviso—

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 3 (7), 153 AND 157

I. L. R. 38 Mad. 163

s. 192—

1. *Presentation of* *plaint to Head Clerk not authorized to receive—Limitation Act (IX of 1908), s. 1—Court not closed, if the officer on tour only and not on leave—Rule 14 of Civil Rules of Practice.* Plaints under the Madras Estates Land Act (I of 1908) cannot be said to be validly presented, if presented to the Head Clerk of the Collector, unless the Collector has appointed him to receive them. A Court cannot be said to be closed within the meaning of s. 4 of the Limitation Act (IX of 1908) merely because the presiding officer is not in head-quarters but is in camp on tour. Rule 14 of the Civil Rules of Practice does not apply to proceedings before a Revenue Court. *THE RECEIVER OF THE NIDAVOLE AND MEDUR ESTATES v. SURAPARAZU* (1913). I. L. R. 38 Mad. 295

2. *Suit under s. 213—*

Appellate decree—Second Appeal—Limitation Act (IX of 1908), s. 23—Distraint, no continuing wrong—Cause of action. A second appeal lies to the High Court under the provisions of the Code of Civil Procedure from an appellate decree passed in a suit instituted under s. 213 of the Estates Land Act. S. 192 of the Act makes the provisions of Chapter XLII of the Code of 1882, applicable and the provisions that give a right of appeal cannot be struck out and those only which prescribe in what manner an appeal is to be heard and determined, retained. Where the proceedings which give rise to a cause of action consist in wrongful distraint, that distraint is not a continuing wrong, and will not therefore give rise to a continuing cause of action under s. 23 of the Limitation Act. *Pamru Sanyasi v. Zamindar of Jayapur*, I. L. R. 25 Mad. 540, followed. Continuing cause of action, under English law considered. *Hole v. Chard Union*, [1894] 1 Ch. 293, referred to. *VENKATARAMIAH v. VAITHILINGA THAMBIRAM* (1913).

I. L. R. 38 Mad. 655

MADRAS ESTATES LAND ACT (I OF 1908)—
*concl'd.*ss. 210, 211, cl. (2), art. 8 of sch.
part A—

See LIMITATION. I. L. R. 38 Mad. 101.

MADRAS FOREST ACT (V OF 1882).

offence under—

See PENAL CODE (ACT XLV OF 1860)
ss. 40, 79. — I. L. R. 38 Mad. 773**MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).**

s. 2—

See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876). s. 2

I. L. R. 38 Mad. 1128

MADRAS IRRIGATION CESS ACT (VII OF 1865).

s. 1—"Engagements" construction of—*Undertaking by Government to supply water for wet lands free of charge—Engagements at the time of the Permanent Settlement—Subsequent engagements, express or implied, if included under the section—Unauthorised acts of subordinate officers, how far binding on Government—Ratification, essentials of—Communication of, to the other party, if necessary—When complete—Government Orders, how far ratifications—Indian Contract Act (IX of 1872), ss. 196 to 200 and 3 to 6.* In all cases of permanently settled estates, where the incomes derivable from wet lands have been taken into consideration in settling the peshkash payable to Government, there is an implied undertaking of the nature of an enforceable contract on the part of the Government to allow the use of Government water to such wet lands without charge: and this implied undertaking amounts to an engagement within the meaning of the Act. There is a similar implied engagement as regards inams. The word "engagements" in s. 1 of Act VII of 1865 is not qualified in any way and is not limited to the cases of engagements deducible from the circumstances under which the peshkash (or quit-rent in the case of an inam) was determined at the time of the Permanent Settlement, but includes all engagements between the Government and the landholder that might have been made or be deducible from the circumstances, at any time after the Permanent Settlement. *Per AYLING J.—Held* (on a construction of the Government Orders and other proceedings), that no implied engagement of the latter kind or a ratification thereof by the Government was established. An express ratification by one party within the meaning of s. 197 of the Indian Contract Act, cannot become complete until it is communicated to the other party. Till then it is liable to revocation. This is in accordance with the principles embodied in the provisions of s. 3 to 6 of the Act, which deal with proposals, acceptances and revocations. An order of Government which stated that an unauthorised act of a subordinate officer should not be repudiated must be treated as an incom-

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*concl'd*s. 1—*concl'd*.

plete ratification before communication to the landholders concerned, and the same, having been revoked by a later Government Order, is not binding upon the Government. It is not advisable the 1
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Tital, I. L. R. 22 Bom 112 and Hilder v. Dexter, [1902] A. C. 474, referred to Per SABASIVA AIAAR, J.—A deliberate and considered ratification by Government reduced into a formal Government Order is conclusive just as a person's declaration in a registered document would stand even if not directly communicated to third persons.

14 *Mad. L. T. 131, Secretary of State for India, v. Ambalathana Pandarasamudhi, I. L. R. 31 Mad 366, Maria Susan Mudaliar v. The Secretary of State for India, 14 Mad L. J. 350, The Secretary of State for India v. Peruma Pillai, I. L. R. 24 Mad. 273 and Venkata Rangayya Appa Row v. Secretary of State for India, 24 Mad L. J. 680, referred to. RAJAGOPALACHARYULU v. SECRETARY OF STATE (1913) I. L. R. 38 Mad. 697*

MADRAS LAND ENCROACHMENT ACT (III OF 1905).

— s. 3, 5 and 14—*Penal assessment, levy of—Suit for declaration of title and recovery of penal assessment—Suit brought after six months from date of notice and levy of penal assessment—Suit barred—Limitation.* Where the plaintiff brought a suit against the Secretary of State for a declaration of his title to certain immovable property and for recovery of penal assessment levied from him by Government under Section 5 of the Madras Act III of 1905, more than six months after the issue of notice and levy of the assessment from him. *Held*, that the suit for declaration of title as well as for recovery of penal assessment was barred under s. 14 of the Madras Act III of 1905. *BRANKARADU v. SUBBARAYUDU (1913) I. L. R. 28 Mad. 674*

MADRAS LOCAL BOARDS ACT (V OF 1884)

s. 63, 68 and 73—

See MITT, HEAD OF.

I. L. R. 33 Mad. 758

MADRAS REGULATION (XXV OF 1802).*See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876) s. 2.*

I. L. R. 33 Mad. 1129

See MADRAS PERMANENT SETTLEMENT REGULATION

s. 4—*Pre-settlement inama—Lands held on service tenure in addition to payment of quit rent—Service to Zamindar—Service quasi public before settlement—Its discontinuance thereafter—Assumption by Government, right of—Presumption—Onus of proof, as to exclusion prior to Settlement—Evidence Act (I of 1872), ss 106 and 114, ill. (g) Where lands in a Zamindari were pre-settlement inama granted on condition of rendering personal service to the zamindar and paying a favourable quit rent, and the Government resumed such inama on the ground of discontinuance of such services. *Held*, that as the grant was for services purely personal to the zamindar, *prima facie* the inama formed part of the assets of the zamindari and the zamindar, and not the Government, was entitled to resume. *Held*, also, that where such service is rendered, in addition to quit rent, the proviso to s. 4, Regulation XXV of 1802, has no application. The onus of proving that such lands were excluded from the assets of the zamindari, and that the Government had the right to resume lay on them. *Per TRINNI, J.*—The Government having special means of knowledge as to exclusion or otherwise, of these lands, at the settlement, from the Zamindari, the burden was upon them according to s. 106 of the Evidence Act and the necessary presumption against the non production of the records in their possession should be drawn against them. *SARAJA PARTHASARATHY APPA RAO BANADUR v. SECRETARY OF STATE (1913) I. L. R. 38 Mad. 620**

MADRAS RENT RECOVERY ACT (VIII OF 1865).

— ss. 23, 35, 39 and 40—

See LIMITATION ACT (IX OF 1905) s.

22. I. L. R. 38 Mad. 537

MADRAS REVENUE RECOVERY ACT (II OF 1863).

— s. 59—

*See LIMITATION. I. L. R. 38 Mad. 92***MADRAS WATER-CESS ACT (VII OF 1863).***See GRANT, CONSTRUCTION OF—*

I. L. R. 33 Mad. 424

MAGISTRATES, BEACH OF.

*Magistrate, competency who has not heard and the evidence—Criminal Procedure Code (Act V of 1903), s. 553 Where the trial of the accused was commenced before a District Magistrate who heard part of the evidence and continued before the same District Magistrate and another who had joined as the fifth, and all the two Magistrates deliver judgment exonerating the accused. *Held*, that the case*

MAHOMEDAN LAW—MARRIAGE—conclq.

necessarily a large experience in matters of this nature, and the Subordinate Judge had no more opportunity than they of seeing and observing the demeanour of the witnesses, and they, on the other hand, had evidence before them which was not before the Subordinate Judge. *Held*, also, on the evidence, that if the deed were treated as valid and the plaintiff's witnesses as reliable, there was considerable evidence that co-habitation of *M* and *A* commenced in a *muta* marriage, and that in the absence of evidence to the contrary such marriage must be taken to have subsisted throughout the period which covered the conception and birth of plaintiff's sisters. That their claim as such being statute-barred, the expiration of the period of limitation would accrue for the benefit of the defendant and not for the benefit of the plaintiff. *SHOHARAT SINGH v. JAFRI BIBI* (1914).

19 C. W. N. 225

3. *Marriage—Fosterage—Marriage of a woman's natural son with her foster-daughter, if valid.* The prohibition of Mahomedan Law to the marriage of a woman's natural son with her foster-daughter is absolute and not conditional upon the birth of the one and the suckling of the other occurring within any limited period. The principle of *factum valet* does not render good in law a marriage which ought not in law to have been celebrated. *Radha Mohun v. Hardai Bibi*, I. L. R. 22 Mad. 398, followed. *JANAB ALI MIA v. NAZAMADDIN* (1915).

19 C. W. N. 897

MAHOMEDAN LAW—MUTAWALLI.

Mutawalliship of property annexed to a mosque—Right to succeed by principle of heredity—Proof and validity of such right. *Held*, on the facts of the case, that the plaintiff who claimed to be the mutawalli of the plaint mosque by right of heredity had not established by clear proof that that was the method of succession to the office and that he was therefore the lawful mutawalli. *Held*, also, as a valid appointment of a mutawalli could be made only in one of three modes, viz.: (a) by the original author, of the waqf or by some person expressly authorized by him, or (b) by the executor of the author or (c) lastly, by the Court, any person claiming to be a mutawalli by heredity must show by strict proof of precedents that that mode of appointment was one which must be necessarily deemed to have been sanctioned by the author of the trust. It is frequently provided that each *mutawalli* should have the power to appoint his successor; where there has been a long established practice for the mutawalli to nominate his successor, it is assumed (unless the contrary is proved) that power to do so was given by the founder of the *waqf*. But where from past practice, it is sought to be established that the *mutawalliship* is to devolve hereditarily, there must be something from which a rule of hereditary succession sufficiently precise or definite may be deduced; and the mere fact that for some time prior to 1874 three persons from the family of the plaintiff were successively muta-

MAHOMEDAN LAW—MUTAWALLI—conclq.

wallis does not show that mutawalliship devolved by heredity in the absence of proof that they were not appointed or nominated by somebody. *Sayad Abdula Edrus v. Sayad Zain Sayad Hasan Edrus*, I. L. R. 13 Bom. 555, 562, referred to. *Per SADASIVA AYYAR, J.* Heredity as a principle of succession to any office is highly objectionable. *PHATMABI v. HAJI MUSA SAHIB* (1913).

I. L. R. 38 Mad. 491

MAHOMEDAN LAW—PRE-EMPTION.

Pre-emption—Sale—Demands—Assignment in lieu of dower debt. If at the time of *talab-i-mawasibat* the pre-emptor has an opportunity of invoking witnesses, in the presence of the seller or the purchaser or on the premises, to attest the immediate demand, it would suffice for both the demands, and there would be no necessity for the second demand. *Nundo Pershad Thakur v. Gopal Thakur*, I. L. R. 10 Calc. 1008, referred to. *Held*, further, that when property is sold by a husband to his wife in lieu of dower a suit for pre-emption can be maintained by a person entitled to a preferential right to purchase that property. *Fida Ali v. Muzaftar Ali*, I. L. R. 5 All. 65, followed. *NATHU v. SHADI* (1915). . . . I. L. R. 37 All. 522

MAHOMEDAN LAW—WAKF.

See MUSSALMAN WAKF VALIDATING ACT (VI OF 1913), s. 3.

I. L. R. 39 Bom. 563

1. *Constitution of wakf by deed of trust—Objects charitable and religious—Validity of wakf.* Where with the object of dedicating a house to the service of the Imams, Hassan and Hussain, and for other religious purposes, the settler had conveyed the house to his grand-daughter and his grand-son on trust for the proper observance of the objects mentioned in the deed:—*Held*, that there was a valid wakf. *Delross Banoo Begum v. Ashgur Ally Khan*, 15 B. L. R. 167, discussed. *Phul Chand v. Abkar Yar Khan*, I. L. R. 19 All. 211, *Biba Jan v. Kalb Husain*, I. L. R. 31 All. 136, *Mazhar Husain Khan v. Abdul Hadi Khan*, I. L. R. 33 All. 400, referred to. *RAM CHARAN LAL v. FATIMA BEGAM* (1915). . . . I. L. R. 42 Calc. 933

2. *Dedication for expenses of mosque and maintenance of family members, how far valid* Where a person belonging to the Hanafi School of Mahomedan Law made a wakf whereby he provided for the payment of expenses of and in connection with, a mosque and for regular monthly maintenance of the members of his family: *Held* that the dedication in connection with the mosque was valid, but not so the provision for the payment of maintenance to members of the family. *RAHMUNNISSA BIBI v. SHAIKH MANIK JAN* (1914). . . . 19 C. W. N. 76

3. *Wakf—Res judicata—Decision in previous suit between same individuals, but brought by plaintiff in another capacity—Decision of High Court on legal grounds de-*

MAHOMEDAN LAW—WAKE—concl'd

clarin
when
by a
original owner of property which the latter had made wakf before his death, it was declared by the High Court on appeal on legal grounds that the wakf was invalid. *Held*, that this adjudication by the High Court of the invalidity of the wakf was binding between the parties to a subsequent suit brought against the same defendant by the same plaintiff, but suing now as the heir of the owner's daughter. **MAHOMED BERTH MAHOMED v DEWAT AJMOH RAJA** (1915) 18 C W N 987

MAIDEN S PROPERTY.

See HINDU LAW—SECESSION
I. L. R. 38 Mad. 45

MAINTENANCE

See DIVORCE ACT (IV of 1869), s. 37
I. L. R. 39 Bom 182

See HINDU LAW—ADOPTION
I. L. R. 39 Bom 528

See MALABAR LAW
I. L. R. 38 Mad. 78

of mother, right to—
See HINDU LAW—PARTITION
I. L. R. 38 Mad 556

right to—
See MALABAR LAW
I. L. R. 38 Mad. 79

right to get, from husband's estate—
See HINDU LAW—MAINTENANCE
I. L. R. 38 Mad 133

MAJORITY

See MORTGAGE BY MINOR
I. L. R. 38 Mad. 1071

age of, for making a will—
See HINDU LAW—MINOR.
I. L. R. 38 Mad 193

MAJORITY ACT (IX OF 1875)

s. 3—
See HINDU LAW—MINOR.
I. L. R. 38 Mad. 168

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD I OF 1900)

ss 5 and 19—Compensation, rate of, for tenants' improvement—Compensation, amount of, methods of fixing—Contract made before 1st January 1886—No express reference to tenants' right to make improvements—Contract less favourable to tenant than ss 5 and 6 of the Act—Contract not binding—ss 5 and 6 applicable. Where a contract, entered into between a landlord and a tenant in Malabar, before the 1st January 1886, regulated the rates of compensation claimable for the tenant for improvements, or provided for the methods of fixing, the amount of compensation due to

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD I OF 1900)—concl'd

s. 5—concl'd
but did not expressly refer to the tenant's right to make improvements. *Held* (by the Full Bench) that the contract is not binding on the tenant if it is less favourable to him than ss. 5 and 6 of the Malabar Compensation for Tenants' Improvements Act (I of 1900), and that the tenant is entitled to claim compensation according to the provisions of the Act. *Held*, also, that there is no inconsistency between the judgment in *Pandurupurayil Kunhiyore v Veruth Kunhi Kannon*, 1 L. R. 32 Mad 1, and the judgments in *Kochikol Sreemana Vikraman v Molathil Ananta Potter*, 1 L. R. 36 Mad 61, and *Paru Imma v Moothoram*, 22 Mad L J 221 and that the two last mentioned cases were rightly decided. **KOCHU RABIA v ABDUL KAN** (1913) I. L. R. 38 Mad 569

MALABAR LAW.

1—*Marumalakkathayam*
—Female's self-acquisition, descent of, to her own heirs and not to tarwad—*Tavashi*, meaning of. The self-acquisitions of a female member of a Marumalakkathayam tarwad do not lapse on her death to her tarwad, but descend to her tavashi, which will be her issue if she has any, and in the absence of the issue will be her mother and her descendants. *Tavashi* is defined. **Govindan Nair v Bankaran Nair**, 1 L. R. 32 Mad 357, distinguished. **Umamanga v Appadorai Potter**, 1 L. R. 34 Mad 357, overruled. **KRISHNAN v DAMODARAN** (1911) I. L. R. 38 Mad 48

2—*Right to maintain*
—Members of a tarwad—Maintenance out of tarwad property—Suit against managing member of tarwad—Tarwad property insufficient for maintenance—Gift by husband to wife—Men who are children—Inter est tak nity wife with other's debt—Right of tarwad—Construction of deed of gift. A member of a tarwad has a right to sue the managing member of the tarwad for his maintenance if maintenance is refused by such managing member, where the karnavan of the tarwad is unable to maintain the member out of tarwad property. It is immaterial whether the member of the tarwad seeking maintenance has private means sufficient to provide for him an adequate main tenance without necessity of recourse to the tarwad property. *Ishtadul sum*

part of the tarwad to which a member of a tarwad can look for maintenance. He has a right to demand an allowance in the nature of maintenance from the tarwad property itself. Maintenance is not a mere subsistence allowance. It should be based on the value of the tarwad property, the position of the member, and the standard of what is just and reasonable for the members of the tarwad. A member of the tarwad is entitled to an allowance for maintenance from the tarwad property.

MALABAR LAW—concl'd.

tarwad properties. Where a deed of gift in favour of a woman is clearly expressed to be to her and her children, there is no warrant for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam tarwad. It makes no difference that the karnavan of the tarwad joined in the gift. In estimating the amount of the income of the tavazhi property out of which maintenance is payable, the interest payable upon debts binding on the tavazhi should be deducted but not interest on debts contracted after the period for which maintenance is claimed. *NAKU AMMA v. RAGHAVA MENON* (1912). I. L. R. 38 Mad. 79

3. ————— *Nambudri Illom*—*No liability of sons to pay their father's debts.* A Nambudri Illom differs in many respects from an ordinary joint Hindu family on account of the impartibility of its property and its close resemblance to a Nair tarwad. The rule of Hindu Law which imposes the duty on a son to pay his father's personal debts, neither illegal nor immoral, is not applicable to Nambudris; and the mere fact that there are no other members in the 'Illom' besides the sons and grandsons of the Nambudri debtor, cannot affect the principle. *Nilakandan v. Madhavan*, I. L. R. 10 Mad. 9, and *Govinda v. Krishnan*, I. L. R. 15 Mad. 333, followed. *Kunhichekan v. Lydia Arucanden*, (1912) Mad. W. N. 386, considered. *Muttayan v. Zemindar of Sivagiri*, I. L. R. 6 Mad. 1, distinguished. *KUNHU KUTTI AMMAH v. MALLAPRATU* (1915).

I. L. R. 38 Mad. 527

**MALABAR TENANTS' IMPROVEMENTS ACT
MAD. I OF 1900.**

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

————— ss. 3 and 5—*Tenant introduced by mortgagor after mortgage—Purchaser in execution of decree on mortgage—Right to improvements against—Right of tenant to improvements not confined against lessor.* The word "tenant" in s. 3 of the Malabar Tenants' Improvements Act (Madras Act I of 1900) includes also a lessee from a mortgagor after the creation of a mortgage in favour of a stranger. Hence, such a tenant is entitled under s. 5 of the Act to the value of improvements effected by him even as against a purchaser in execution of the decree under a mortgage. S. 5 of the Act does not confine the tenant's rights to improvements only as against his lessor. *KANARAN v. CHIRUTHA* (1914).

I. L. R. 33 Mad. 954

MALICE.

See MARRIAGE, CONTRACT OF.

I. L. R. 39 Bom. 682

MALICIOUS PROSECUTION.

————— *Suit for damages—*"Prosecution," what it means and when commences—*Accused attending at judicial enquiry upon notice, if may sue on failure of prosecution.* The action for damages for malicious prosecution is

MALICIOUS PROSECUTION—concl'd.

not a creature of any statute. To determine whether such an action lies, the term "prosecution" should not be interpreted in the restricted sense in which it is used in the Code of Criminal Procedure. A proceeding maliciously taken against a person to compel him to furnish surety, to keep the peace may be made the foundation of a suit for damages for malicious prosecution. A prosecution exists when a criminal charge is made before a judicial officer or tribunal, and any person who makes or is actively instrumental in the making or prosecuting of such a charge is deemed to prosecute it. If a person, maliciously and without reasonable and probable cause, sets the machinery of the criminal law in motion, he is responsible for the consequence and cannot escape liability on the ground that the action taken by the Court was such as he did not intend or was erroneous in law. The prosecution commences as soon as the complaint is made to the Magistrate irrespective of the result of the prosecution or of the stage at which it may fall through. When no action at all has been taken against the plaintiff upon such a complaint, the action would fail, not because there was no prosecution commenced, but because there was no damage done to the plaintiff. Where on a complaint being filed by the defendant against the plaintiff, the Magistrate ordered an enquiry by a Subordinate Magistrate, and the latter gave the plaintiff notice so that he might appear at the enquiry and be heard, and the plaintiff did so; and the complaint was in the end dismissed: *Held*, that upon these facts, the plaintiff had a cause of action for damages for malicious prosecution and would be entitled to get damages for less which he may prove to have suffered in consequence. That it was not open to the defendant in such a suit to urge that the plaintiff need not have appeared. *Kandasami v. Subramania*, 13 Mad. L. J. 370, and *Meeran v. Ratnavelu*, I. L. R. 37 Mad. 181, dissented from. *Crowdy v. O'Reilly*, 17 C. W. N. 554; s. c. 17 C. L. J. 105, followed. *Clarke v. Postan*, 6 C. & P. 423, *Yates v. Queen*, 14 Q. B. D. 648, *De Rozario v. Golapchand*, I. L. R. 37 Calc. 353, and *Golap Jan v. Bholanath*, 15 C. W. N. 917; s. c. I. L. R. 38 Calc. 880, considered. *Ahmed Bhai v. Framjee*, I. L. R. 28 Bom. 226, approved. *BISHUN PERSHAD NARAIN SINGH v. PHULMAN SINGH* (1914).

19 C. W. N. 935

MALIKANA.

————— *Interest in immoveable property—Money charged on immoveable property—Limitation Act (XIV of 1859), s. 12 (IX of 1871), Art. 132, Sch. 11—Right not exercised for more than 12 years before Act IX of 1871 came into operation—Right if barred.* Under Act XIV of 1859, *malikana* was an interest in immoveable property and governed by Act XIV of 1859, s. 12, and would be barred if there had been no enjoyment of the *malikana* for a period of 12 years. *Bhoalee Singh v. Neemoo Behoo*, 12 W. R. 498, *Gobind Chunder Roy Choudhary v. Ram Chunder Choudhary*, 19 W. R. 94, and *Heerranund Shoo v. Ozeerun*, 9 W. R.

MALIKANA—*conold*

102, followed. Where therefore the right to *malikana* was established by decree of Court in 1833 but the right was not enjoyed for more than 12 years before Act IX of 1871 came into force, the right was extinguished under Act XIV of 1859 and could not be revived by any subsequent statute of limitation. *Chhagan Lal v. Bapubhai*, 1 L. R. 5 Bom. 68, distinguished *MANESHER PROSHAD SINGH v. BALU NATH HAZARI* (1913)

19 C. W. N. 410

MALIKANA DUES.

See CIVIL PROCEDURE CODE (1908), s. 91.

O XXXVIII, n. 5, O XXXIX, n. 1

I. L. R. 37 All 423

MANLATDAR.

See CRIMINAL PROCEDURE CODE (ACT V of 1898), s. 193 (1) (c)

I. L. R. 39 Bom. 310

MANLATDARS' COURTS ACT, (BOM. ACT II OF 1906).

— s. 23—Possessory Suit—District Deputy Collector's authority to revise—Bombay General

does not include 'District Deputy Collector' in view of the express definition of the term in s. 3 of the Bombay General Clauses Act (Bom Act I of 1904). A District Deputy Collector has, therefore, no authority to pass any order under the Manlatdars' Courts Act (Bom Act II of 1906). *Keshav v. Jaisram*, 1 L. R. 36 Bom. 123 distinguished from *Sonu JANARDAN v. ARJUN WALAD BARKU* (1915)

I. L. R. 39 Bom. 552

MANAGER.

See HINDU LAW—JOINT FAMILY

I. L. R. 39 Bom. 715

MANDAMUS OR INJUNCTION.

See MADRAS CITY MUNICIPAL ACT (III of 1904)

I. L. R. 39 Mad. 41

MAPPILLAS OF NORTH MALABAR.

Law applicable—Question of fact—Custom, requisites of a valid—Judicial notice—Reasonableness or legality—Question of law—Custom derogating from the Mahomedan law—Madras Civil Courts Act (III of 1873), s. 16. The law applicable to the parties to a suit is the law which the parties as a matter of fact lay their customs and usages have adopted, not the law which the Courts lay a consideration of the historical circumstances relating to the parties or of their religious books or otherwise consider to be the law that they ought to have adopted. If that law being sufficiently certain and not opposed to public policy is of such a nature that the Courts can give effect to it, then the principles underlying s. 16 of the Madras Civil Courts Act require that they should give effect to it.

MAPPILLAS OF NORTH MALABAR—*conold*

Jammya v. Divan, 1 L. R. 23 All. 10, *Muharraraf Ismail Khan v. Lala Shroomukh Rai*, 17 C. W. N. 27, and *Hirbae v. Donabae*, Per O. C. 110, referred to. The question whether the particular parties are governed by the Maronakkhattajari or the Mahomedan law, is one of fact. *George v. Davies*, [1911] 2 K. B. 415, *Jagan v. Pathumma*, 1 L. R. 22 Mad. 491, and *Kashimbi Umma v. Kandy Muthin*, 1 L. R. 27 Mad. 77, referred to. A custom to hold good in law must be not unreasonable and must apply to matters which the written law has left undetermined, and the majority at least of any given class of persons must look upon it as binding and it must be established by a series of well known, concordant, and, on the whole, continuous instances. The question whether an alleged rule of conduct can be enforced at all or whether it is uncertain or opposed to public policy or unreasonable is one of law and may be considered irrespective of the question whether the custom actually exists. *Moult v. Halliday*, [1903] 1 Q. B. 125, followed. *S. 16 of the Madras Civil Courts Act*, discussed. *K. S. HANMER v. KALANTHAN* (1914).

I. L. R. 33 Mad. 1052

MARITIME NECESSARIES

See ARREST OF SHIP

I. L. R. 42 Calc. 25

MARRIAGE.

See DIVORCE ACT (V of 1869), s. 37.

I. L. R. 33 Mad. 432

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 539

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 42 Calc. 351

— dissolution of—

See BOMBAY CIVIL COURTS ACT (XIV of 1869), s. 1 I. L. R. 59 Bom. 138

(Contract of Marriage)—

Procuring breach of contract—Conspiracy—Cause of action—Malice, an essential ingredient—Fact. The first plaintiff betrothed his son, the second plaintiff, to one J. Subsequently J's father married her to the first defendant. Thereupon the plaintiffs brought this action against the first defendant and his sisters, the second and third defendants, to recover damages, alleging that they (the defendants) had plotted and conspired together wrongfully to procure the breach of the first contract of marriage. The conspiracy alleged was not proved at the trial nor was it proved that the first defendant knew at the time of his marriage with J of her previous betrothal to the second plaintiff. Held, (i) that the suit was not maintainable, (ii) that no legal right inhering in the plaintiff had been violated, since, according to Hindu law, by which the parties were governed, a father was entitled to break off his daughter's engagement, should a more suitable bridegroom be available. In an action of conspiracy to procure a breach of contract malice is an essential ingredient of the cause of action. *Hindu in Bombay v. Gye*, 22 L. J. Q. B. 127.

MARRIAGE—concl'd.

considered and its universal applicability doubted.
KHIMJI VASSONJI v. NARSI DHANJI (1914)

I. L. R. 39 Bom. 682

MARUMAKKATTAYAM.

See **MALABAR LAW** I. L. R. 38 Mad. 48

MATADARS ACT (BOM. VI OF 1887).

ss. 9 and 10—"Heir next in succession"—*Succession to Matadari property—Succession not confined to the limits of Matadar family—Heir to be ascertained by reference to the personal law governing the parties.* One R, the representative Matadar who inherited his Mata from his mother's side, having died, disputes arose as to the succession to the Matadari property between B, who was the daughter of a maternal cousin of R, and D who was the grand-nephew of R. Held, that D was the preferential heir to B, as in order to ascertain the heir of a deceased Matadar, the Court was not confined to the limits of the Matadar family and should have in the first instance reference to the personal law which governed the parties. **DAYA KHUSAL v. BAI BHUKHI** (1915)

I. L. R. 39 Bom. 478

MAYUKHA.

Ch. VIII, pl. 18—

See **HINDU LAW—SUCCESSION.**

I. L. R. 39 Bom. 87

MEASURE OF RIGHT.

See **EASEMENT** I. L. R. 42 Calc. 46

MELVARAM.

grant of—

See **MADRAS ESTATES LAND ACT (I OF 1908)** s. 8. I. L. R. 38 Mad. 891

MELVARAMDAR.

receiver of—

See **LIMITATION ACT (IX OF 1908)**, s. 22.
 I. L. R. 38 Mad. 837

right of, to trees—

See **INAM REGISTER.**

I. L. R. 38 Mad. 155

MEMORANDUM OF AGREEMENT.

See **STAMP ACT (II OF 1899)**, s. 57.

I. L. R. 38 Mad. 349

MERCHANT SEAMEN ACT (I OF 1859).

s. 58, cl. 4—*Merchant Shipping Act (57 and 58 Vic. C. 60), s. 114, clause 3, and 225, clauses (b) and (c)—Wilful disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clause about transfer in articles of agreement not ultra vires.* The accused signed articles of agreement in London with the Master of the SS. *Arcadia* (a steamer belonging to the Peninsular and Oriental Steam Navigation Company), under which he agreed *inter alia* to obey the lawful commands of the

MERCHANT SEAMEN ACT (I OF 1859)—concl'd.

s. 58, cl. 4—concl'd.

Master or the superior Officers, and to transfer to any other vessel of the Company, when required during the period of service. These articles were initialled by an Officer of the Board of Trade. When the SS. *Arcadia* arrived in the Bombay Harbour it was sold by the Company to an Indian Merchant. The accused was then ordered by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS. *Arcadia* to transfer himself to the SS. *Salsette*, another boat belonging to the Company. For a wilful disobedience of this order, the accused was convicted under s. 83, clause 4 of the Merchant Seamen Act (I of 1859). The accused applied to the High Court against the conviction, contending, first that the article respecting transfer was *ultra vires*, and secondly, that the order as to transfer given by the Marine Superintendent of the Company was not a lawful command.—Held, that having regard to s. 114, clause 3 of the Merchant Shipping Act (57 and 58 Vic. C. 60) and to the fact that the articles of agreement had been initialled by an Officer of the Board of Trade, the article as to transfer was not *ultra vires*. Held, further, the order to transfer having been given by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS. *Arcadia* was a lawful command of the latter, failure to obey which was punishable under s. 83, clause 4 of the Merchant Seamen Act (I of 1859). **EMPEROR v. A. GOODHEW** (1915)

I. L. R. 39 Bom. 558

MERCHANT SHIPPING ACT (57 & 58 VICT. C. 60).

ss. 114, cl. (3), and 225, cl. (B) and (C)—

See **MERCHANT SEAMEN ACT (I OF 1859)**
 s. 83, cl. (4) I. L. R. 39 Bom. 558

MESNE PROFITS.

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**, O. II, RR. 2 AND 4.

I. L. R. 38 Mad. 829

See **DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)**, s. 13.

I. L. R. 39 Bom. 587

right to past, transfer of—

See **TRANSFER OF PROPERTY ACT (IV OF 1882)**, s. 6, cl. (e).

I. L. R. 38 Mad. 308

MINE.

See **MINERAL RIGHTS.**

Coal mine, working of, by lessee—*Suit for perpetual injunction to restrain lessee from connecting leased mine with other mines, from instroke working and from cutting or changing the thickness of supporting pillars—Suit, if to fail if premature in respect of one of several reliefs—Injunction, circumstances justifying the grant of—Breach of contract between lessor and lessee*

MINE—contd.

—Lessee is bound to leave barrier of coal to prevent communication with adjoining mine—Infringe, right of—Lessee, if can be deprived of right of intrude working without express provision in lease—Presumption of right in favour of lessee—Subsidence, owner's right of support against—Circumstances under which Court should protect such right by injunction. After the death of the lessee of a coalmine his sons transferred their interest in the mine to a person who had mines in the immediate vicinity.

off or changing or diminishing the thickness of the pillars of coal in the disputed mine. The Subordinate Judge granted an injunction on the first two grounds and refused an injunction on the third ground. It appeared that under the lease the leasee was entitled to remove all the coal of the demised mine, but he undertook to manage the work according to the prevailing practice with special care and expertness. It was not suggested that the defendant had acted in breach of this covenant. The plaintiff alleged that the transfer had been made with a view to enable the purchaser to injure the plaintiff by an improper working of the mine; he further asserted that there was a conspiracy amongst the defendants who had threatened to cause him loss. The defendant denied the truth of these allegations. *Held*, that it is well settled that a man who seeks the aid of the

done is not sufficient." That as the defendant

contract between the lessor and lessee. That as regards the mode of removal of the coal, the plaintiff failed to prove that he had any ground for an injunction in this respect, but the suit could not consequently be deemed premature in respect of all the reliefs claimed, though the objection might hold good with regard to one of them. That the

the present case. And as the right of the surface owner to have the lease to have a barrier of coal merely to prevent communication with adjoining mines and the injunction granted by the Court below restraining the defendant from breaking through the existing barrier of coal could not be supported. That the right of instroke is the right of conveying minerals leased to the surface through a pit or shaft in the adjoining mine, it is the converse right to that of outstroke which is the right of conveying minerals from an adjoining mine to the surface through

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a pit or shaft in the mine leased and a license is required.

which happened and did not provide for it in the contract. There would consequently be a presumption of right in the lease to work in the most advantageous way subject to his not committing a fraud on the lessor and no fraud on the part of the leasee having been proved, the injunction to restrain the defendant from working the mine by instroke could not be sustained. That *quod fieri* the owner of the surface has a right of support and the leasee is not entitled to work the mine so as to cause a subsidence. This right to support will be protected by an injunction if the Court is satisfied that injury is imminent and certain to result from the defendant's acts. The Court will also interfere by injunction when the defendant claims the right to do acts which must inevitably cause a subsidence. But in the present case there were no materials to show that the plaintiff had the right to the surface and till such right was established, he could have no right to claim protection against subsidence of the surface. Even assuming that the plaintiff had right in the surface, there was no evidence to show that the pillars need be maintained.

a way as to endanger the surface, and the injunction in this respect was rightly refused. RAMRAS AGARWALLA & BRAJAMOHAN SINGH (1914)

19 C. W. N. 687.

MINERAL RIGHTS

1.

1. *Mehta's Bechtold v. —* Grant Mehta's Bechtold grant of a *patna* does not pass the minerals under it to the grantee *Hari Narayan Singh Deo v. Sitam Chakravarti, 1 L. R. 37 Cal. 123*, and *Jyoti Prasad Singh v. Lachyur Coal Co., 1 L. R. 35 Cal. 313*, *Induchand. Sonet Kher v. Himmat Bahadur, 1 L. R. 11 Cal. 391*, distinguished. *Karna Behari Seal v. Bansa Prasad Sison (1914) 1 L. R. 32 Cal. 340*

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2. Miners' Rights.
Breakwater grant of entire mine before Permanent
Settlement effect of, in relation to miners' rights.
 The effect of a grant of a rent free breakwater of
 the whole of a mine made before or after the Per-
 manent Settlement is not to transfer any mining
 rights. Jones v. Thomas 10 B. & L. 407; Leach v. Leach 10
 B. & L. 411; 2 C. & F. 12; 1 L. R. 45; 10 C. 455, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889

MINOR.

See CIVIL PROCEDURE CODE (1908). s. 48.
I. L. R. 37 All. 638

See CIVIL PROCEDURE CODE (1908). O.
IX, s. 13; O. XXXII, s. 3.

I. L. R. 37 All. 179

See COMPANY . I. L. R. 39 Bom. 331

See GUARDIAN . I. L. R. 42 Calc. 953

See GUARDIANS AND WARDS ACT (VIII OF
1890). I. L. R. 37 All. 515

See GUARDIANS AND WARDS ACT (VIII
OF 1890), s. 25. I. L. R. 39 Bom. 438

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 42 Calc. 351

See MORTGAGE BY MINOR.

I. L. R. 38 Mad. 1071

_____ fund payable to, if payable to
guardian—

See TRUSTEE . I. L. R. 38 Mad. 71

1. _____ *Insolvency—Provincial Insolvency Act (III of 1907), ss. 4, cls. (b), (g), 16—Contract Act (IX of 1872), ss. 11, 247, 253, 254.—Infant, adjudication of, as an insolvent—Receiver in Insolvency, powers of—Hindu joint-family—Bankruptcy Act, 1883, (46 & 47 Vict., c. 52), ss. 33, 102—Insolvency of partner—Dissolution of partnership. In India, as in England, an infant partner of a firm cannot as such be adjudicated an insolvent. Lovell & Christmas v. Gilbert Walter Beauchamp, [1894] A. C. 607, followed. The creditors of the firm are not entitled to proceed against him personally, being restricted only to his interest in the property of the firm (vide s. 247 of the Indian Contract Act). There is no difference in principle between the nature of the liability of an infant admitted by agreement in a partnership business and that of another (e.g., a Hindu) on whose behalf an ancestral trade is carried on by his guardian. Joykisto v. Nityanand, I. L. R. 3 Calc. 738, Ram Parab v. Foolibai, I. L. R. 20 Bom. 767, referred to. It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents. Lovell & Christmas v. Gilbert Walter Beauchamp, [1894] A. C. 607, explained. Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court, it is not so in India. Vide ss. 253, 254 of the Indian Contract Act. A receiver appointed under s. 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm. The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom. SANYASI CHARAN MANDAL v. ASUTOSH GHOSE (1914)*

I. L. R. 42 Calc. 225

2. _____ *Settlement accepted by infant—Transfer of property by husband acting as attorney—Impossibility to restore status quo, bar to re-opening settlement—Ratification. Where by a division of property by independent arbitrators, a*

MINOR—concl'd.

share was allotted to an infant who after coming of age sold a valuable property so allotted at a profit, and it appeared that she was throughout acting with her husband who held a power of attorney from her and of whose acts as attorney she had not complained, and who if the infancy had been known would have been appointed her guardian and as guardian would have acted exactly as he had acted as attorney; and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy: *Held*, that though there could be no ratification by an infant, after coming of age, of the invalid power of attorney, as it was impossible for her to restore the property she had received and a general redistribution of the property divided could not possibly be ordered, she could not be allowed to reopen the settlement. *Held*, also, that she was bound by a transaction which was not concealed from her in any way, and formed part of the settlement. CHUAH HOOI GUOH NEOH v. KHAW SIM BEE (1915)

19 C. W. N. 787

MINOR WIDOW.

See GUARDIAN . I. L. R. 42 Calc. 953

MINORITY.

See CIVIL PROCEDURE CODE (ACT V OF
1908), s. 48 I. L. R. 39 Bom. 256

MISAPPROPRIATION.

See SHEBAIT I. L. R. 42 Calc. 244

MISAPPROPRIATION OF GOODS.

_____ suit for—

See LIMITATION ACT (IX OF 1908), SCH. I,
ARTS. 48, 49 I. L. R. 38 Mad. 783

MISJOINDER.

_____ *Wrongful confinement on one day, wrongful confinement and assault of the same persons on a subsequent day—Identity of transaction—Unity of object—Criminal Procedure Code (Act V of 1898) s. 239. Where, in consequence of certain persons having killed a cow on a zamindar's estate contrary to practice and eaten its flesh, they were taken to the cutcherry on the 14th December, fined therefor and confined till they had furnished security for the payment of the fine within three days, and on their failure to do so were again taken to the cutcherry and detained there, and on information given to the police, one of them was beaten and all ejected:—Held*, that the illegal confinement on the first day, and the similar confinement and assault on the second day were parts of the same transaction, the object of the accused on both days being the same, viz., to punish the persons for a breach of the rule by extorting the fine, and the assault on the second day being the conclusion of the transaction, and that the joint trial of the accused for offences under s. 347 of the Penal Code committed on the 14th and 18th and for that under s. 352 on the latter date by them was legal. Emperor v. Datto Hanmant Shahapurkar, I. L. R.

MISJOINDER—concl.

30 Bom. 12 and Emperor v. Sherufulla Mithoy, 1 L. R. 27 Bo. 135 approved *Balhai Sherk v. Emperor* 1 L. R. 33 Cal. 92 and *Gul Mahomed v. Chelaru Mantal*, 10 C. W. N. 51 distinguished *DEPUTY JUDICIAL REMEMBRANCE v. KAILASH CHANDRA GHOSH* (1914)

I L. R. 42 Cal. 760

MISJOINDER OF CHARGES

See CHARGE

I L. R. 42 Cal. 957

*Joint trial for offences under s. 120 B of the Penal Code and ss. 19 (f), 20 of the Arms Act committed in pursuance of the object of the conspiracy—Identity of transaction—Criminal procedure Code (Act I of 1895) s. 39—Joint possession of arms—Mere keeping of fire-arms not an offence. Fire-arms whether inclusive of parts of the same—Arms Act (VI of 1878) ss. 1 & 14 14(a) (f) s. 39—Criminal conspiracy proof of—Unishment when act contemplated not done—Penal Code (Act XLV of 1860) ss. 109 116 120B A charge of criminal conspiracy to manufacture arms under s. 120B of the Penal Code read with s. 19(a) of the Arms Act (VI of 1878) may be tried jointly with charges of offences under ss. 19 (f) and 20 of the latter Act committed in pursuance of the object of the conspiracy. As long as the conspiracy continues the transaction which began with the forming of the common intention continues and the offences under ss. 19(f) and 20 of the Arms Act are committed in the course of the same transaction. *Legal Remembrancer Bejpal v. Mon Mohan Roy* 19 C. W. N. 672 21 C. L. J. 195 followed. Where two persons rented a house and lived in it, and parts of arms were found in one of the rooms—Held, that both being in joint occupation of the house, were in joint possession of the articles so found. The word 'fire-arms' in s. 14 read with the meaning of 'arms' in s. 4 of the Arms Act includes parts of fire-arms. Fire arms means only arms fired by gunpowder or other explosives. *Isamed Hussain v. Queen Empress* 1 L. R. 37 Cal. 692 *Emperor v. Dhan Singh* 5 Cr. L. J. 435, 3 V. L. R. 53, followed. The offence under ss. 5 and 19 (a) of the Arms Act is not a mere keeping of arms but a keeping of the same for sale. In cases of conspiracy, the agreement between the conspirators cannot generally be directly proved but only inferred from the established facts of the case. Where two persons took a house in which a considerable number of pieces of fire-arms was found with tools and implements and work had been actually done to some of the parts of fire-arms, the Court may and ought to infer a conspiracy to manufacture arms. *Per Curiam*: Where there is only a conspiracy to manufacture arms, without an actual manufacture, the sentence should be imposed under s. 120B of the Penal Code read with s. 14(a) of the Arms Act and s. 116 of the Penal Code and the maximum term of imprisonment awarded under these sections is 9 months' rigorous imprisonment. *Per Bench* *not J.* The punishment awarded under s. 120B of the Penal Code varies according as the offence has or has not been committed in con-*

MISJOINDER OF CHARGES—concl.

sequence of the conspiracy. If an offence has been committed the punishment is that provided by s. 109 of the Penal Code, though strictly speaking there should not be a conviction in such cases of conspiracy but of abetment. If it has not been committed the punishment is governed by s. 116 of the Penal Code. *HARSHA NATH CHATTERJEE v. EMPEROR* (1914) I L. R. 42 Cal. 1153

MISREPRESENTATION

See CHUKANI RIGHT

I L. R. 42 Cal. 28

MISTAKE

— in drawing up of a decree—

See CIVIL PROCEDURE CODE (1909), s. 152 I L. R. 37 All. 323

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See HINDU LAW—MORTGAGE

I L. R. 42 Cal. 1068

See HINDU LAW—PARTITION

I L. R. 39 Bom. 373

See HINDU LAW—SUCCESSION

I L. R. 37 All. 545

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See HINDU LAW—SUCCESSION

I L. R. 39 Bom. 87

Ch. II, ss. 5, 6—

See HINDU LAW—INHERITANCE

I L. R. 42 Cal. 384

Ch. II, s. 8, para. 2—

See HINDU LAW—SUCCESSION

I L. R. 39 Bom. 103

— doctrine of, as to right by birth—

See HINDU LAW—PARTITION

I L. R. 33 Mad. 556

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MORTGAGE

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See MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), ss. 3, 5.

I. L. R. 38 Mad. 954

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I. L. R. 38 Mad. 1071

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See PALAS OR TURNS OF WORSHIP.

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I. L. R. 37 All. 390

redemption of—

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 10 I. L. R. 37 All. 226

1. INTEREST.

Interest—Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land-Acquisition Judge for return of mortgage money (out of the compensation money) within term, whether entitled to interest for the whole term—Land Acquisition Act (I of 1894), ss. 18; 30. If the mortgagee makes a demand for payment within the term, and the mortgagor complies, the mortgagee cannot insist upon payment of interest for the whole of the term. Letts v. Hutchins, L. R. 13 Eq. 176, In re Moss, 31 Ch. D. 90, Smith v. Smith, [1891] 3 Ch. 550, referred to. Where the mortgagee has given notice requiring payment within the term, he cannot withdraw it without the consent of the mortgagor. Santley v. Wilde, [1899] 1 Ch. 747; 2 Ch. 474, followed. Where the mortgagor agreed to keep the money for one year from 28th September 1912 on condition that the land should remain as security for the loan during the term, but one of the properties given as security had been acquired (the mortgagee probably having no knowledge thereof), and on the 11th October 1912 the mortgagor applied to the Land Acquisition Deputy Collector that the money due under the mortgage (including one full year's interest) might be paid to him out of the compensation money, and the mortgagor consented: Held, that as the contract between the parties could not be performed according to its letter by reason of circumstances beyond their control, the mortgagor was not bound to pay interest beyond the period of one month (as admitted by him). Bakhawar Begam v. Husaini Khanum, I. L. R. 36 All. 195, explained. PROKASH CHANDRA GHOSE v. HASAN BANU BIBI (1914)

I. L. R. 42 Calc. 1146

2. LOST BOND.

Suit on lost bond—Admission of execution—Plea of payment—How far

MORTGAGE—*contd.***2 LOST BOND—*contd.***

question of loss material. In a suit brought on a lost mortgage bond the defendant, a son of the executant, admitted execution but pleaded payment and denied the loss. *Held*, that since the defendant admitted execution, it lay on him to prove that the mortgage had been discharged. The question of the loss of the bond was only material for the purpose of determining whether the bond had been discharged and returned. **JHANDU MAL v. KARAN SINGH (1915)**

I. L. R. 37 All. 426

3. MINOR.***Mortgage by minor—***

*Settlement of all property by mortgagor after majority—Fraud of creditors—No fraudulent misrepresentation as to age—Liability to refund—Mortgagee, if a creditor—Transfer by mortgagee—Attestation by mortgagor—Endorsement of payments by mortgagor—Suit against mortgagor and his son—Estoppel of mortgagor—Suit not maintainable against the son—Transfer of Property Act (IV of 1882), s. 53—Subsequent creditors, if included The plaintiff sued on a mortgage bond executed by the first defendant during his minority in favour of the third defendant who transferred it to the fourth defendant who again transferred it to the plaintiff. After attaining majority the first defendant executed a settlement transferring all his property to his mother and his wife on behalf of his minor son, the second defendant, stipulating only for maintenance for himself. The first defendant, after attaining majority, had endorsed payments on the mortgage-deed, and attested the transfer of the same by the third defendant to the fourth defendant. It was found by the lower Appellate Court that the settlement was intended to be operative but that it was executed by the first defendant with intent to defeat and delay his creditors. It was also found that there was no fraud or misrepresentation by the minor as to his age when he borrowed on the mortgage. The plaintiff contended that the first defendant was bound to refund the amount advanced on the mortgage to the third defendant, and that he was consequently a creditor entitled to set aside the settlement. The first defendant admitted the plaintiff's claim. The second defendant, who contested the suit, preferred the Second Appeal. *Held*, where a minor has obtained money by misrepresenting his age, that amounts to fraud and he may be made to refund it, but, in the absence of fraud, a refund cannot be ordered. As there was no fraud or misrepresentation by the minor as to his age when he borrowed money on the mortgage, he could not have been ordered to refund, and the third defendant was not one of his creditors at the date of the settlement; consequently the plaintiff was not competent to sue under s. 53 of the Transfer of Property Act to set it aside. The admission of the first defendant during the suit, his endorsement of payments on the mortgage and his attestation of the transfer-deed could*

MORTGAGE—*contd.***3. MINOR—*contd.***

not give the plaintiff the right to set aside the settlement as against the second defendant. *Quare*—Whether subsequent creditors are included under s. 53 of the Transfer of Property Act. *Per SANATHA AYYAR, J.* A person does not actually become a subsequent or prior creditor by reason of the estoppel of the debtor. An estoppel cannot overrule a plain provision of law. The statutory provision that a minor is incompetent to incur a contractual debt cannot be overruled by an estoppel. **VAIKUNTHARAM PILLAI v. ANTHIMU-LAN CHETTIAR (1914)** I. L. R. 38 Mad. 1071

4. PRIORITY.

1. ———— *Prior and puerne mortgage—Sale to prior mortgagee after creation of a puerne mortgage—Prior mortgage kept alive to what extent—Prior mortgagee whether entitled to charge interest after date of sale—His claim for necessary repairs and municipal taxes, whether allowable—Practice—Appeal—Transfer of Property Act (IV of 1882), ss. 65, 72 and 101—Madras District Municipalities Act (II of 1881), s. 103—Doors and windows not movable property. When, after the creation of a puerne mortgage, the mortgagor sells the property to the prior mortgagee with possession, the prior mortgage is kept alive as against a puerne incumbrancer in the circumstances mentioned in s. 101 of the Transfer of Property Act, but not against the owner, whose equity of*

amount of the usufructuary mortgage, he agreed subsequently to enjoy in consideration of the whole price, and he cannot therefore claim any further compensation from the date of sale, for any portion of the price. Where by the terms of the mortgage-deed, the mortgagor personally covenanted to pay the municipal taxes himself, the mortgagee who pays the same, cannot add it to the mortgage amount and recover it from the puerne mortgagee either under a 65, clause (c), or under a 72, Transfer of Property Act, as money spent for preservation of the property as the doors and windows of a house are not movable property and could not have been secured under a 103 of the District Municipalities Act before its amendment in 1907. The cost incurred by the prior mortgagee after the sale, for necessary repairs to the property, viz., for restoring a room that had fallen as irreparable, as all rates incidental to the mortgage must run with the mortgage right itself, and the puerne mortgagee is consequently entitled to add all moneys to the principal amount which he would be entitled to do under a 72 of the Transfer of Property Act, if the sale had not taken place. There is nothing to prevent the appellant from attaching only a portion of the decree by paying sufficient only

MORTGAGE—contd.**4. PRIORITY—concl'd.**

thereon, although the reason for the attack might cover the whole decree. *SYED IBRAHIM SAHIB v. ARUMUGHATHAYEE* (1912)

I. L. R. 38 Mad. 18

2. ————— *Two mortgages executed by the same mortgagor—Mortgagor becoming by inheritance owner of decree for sale on prior mortgage—Effect of, on rights of puisne mortgagees. Held, that a mortgagor who had become by inheritance the owner of a decree against himself on a prior mortgage was not entitled to hold up such prior mortgage as a shield against the decree of a subsequent mortgagee from himself. Otter v. Yaur, 6 D. G. M. & G. 638, Platt v. Mendel, L. R. 27 Ch. D. 246, and Raju Chowdhury v. Chummi Lal, 11 C. W. N. 284, referred to. BADAN v. MURARI LAL* (1915)

I. L. R. 37 All. 309

5. REDEMPTION.

1. ————— *Equity of Redemption—Extinguishment—Mortgagor passing a rajinama to mortgagee for the land—Mortgagee executing kabuliyaat to pay Government assessment. In 1876, the plaintiff mortgaged the land in dispute to the defendant; and in 1879 passed a rajinama relinquishing all his occupancy rights in the said land in favour of the defendants. The latter at the same time gave a complementary kabuliyaat agreeing to pay Government assessment on the land. The plaintiff having sued to redeem the mortgage. Held, dismissing the suit, that the rajinama and kabuliyaat effectually extinguished the plaintiff's equity of redemption. VENKAJI NARAYAN v. GOPAL RAMCHANDRA* (1914)

I. L. R. 39 Bom. 55

2. ————— *Redemption—Previous decree in mortgagee's favour for possession, if bars redemption suit—Civil Procedure Code (Act XIV of 1882), s. 244—Order in execution of decree in suit for possession directing mortgagee to furnish accounts and permitting redemption, effect of. Where in a suit by a mortgagee for recovery of possession "by right of ijara" of the immoveable properties mortgaged, the Court passed a decree directing *inter alia*, that "the plaintiff do get possession of the same by right of ijara and be in possession thereof so long as the money for which the said *mechals* were mortgaged were not repaid out of the income arising therefrom": Held, that the decree was clearly a decree for ejectment and a suit by a person interested in the equity of redemption or redemption of the mortgage was not barred by s. 244 of the Civil Procedure Code of 1882. That the fact that since the decree in the ejectment suit, a predecessor-in-interest of the plaintiff had applied in the executing Court asking "that the decree-holder should file accounts showing what moneys had been realised by him since he took possession under the decree, and if the decretal money was not fully paid to let the Court know how much still remains due by rendering a proper account thereof" and the Court overruling the*

MORTGAGE—contd.**5. REDEMPTION—concl'd.**

objection of the mortgagor that the matter could not be dealt with under s. 244, *held*, that the petitioner could redeem the mortgaged properties, but the latter took no steps to do so. *Held*, that this order if binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he based his right of redemption on that judgment. The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal. *PEARY MOHUN MUKERJEE v. CHANDRA SEKHAR SARKAR* (1915)

19 C. W. N. 1132

6. SALE OF MORTGAGED PROPERTY.

1. ————— *Sale of mortgaged property for any claim of mortgagee unconnected with mortgage—Civil Procedure Code (Act V of 1908), O. XXXIV, r. 14—Transfer of Property Act (IV of 1882), s. 99. A mortgagee is competent, under the Civil Procedure Code of 1908, to have his mortgaged property sold in satisfaction of any claim which he may have against the mortgagor, though the claim may be unconnected with the mortgage. TARAK NATH ADHIKARI v. BHUBANESHWAR MITRA* (1914)

I. L. R. 42 Calc. 780

2. ————— *Suit by second mortgagee—Surplus sale-proceeds taken out by fourth mortgagee in execution of his decree—Third mortgagee if may sue to recover amount realised by fourth mortgagee—Civil Procedure Code (Act V of 1908) s. 73 (1) proviso, cl. (c). A second mortgagee obtained a decree on his mortgage, in execution of which the property was sold and purchased by the third mortgagee. There was a surplus of sale-proceeds left after satisfying the decree. The fourth mortgagee thereafter sued on his mortgage, without making the third mortgagee a party and in execution of the decree obtained by him withdrew a portion of the surplus sale-proceeds. The third mortgagee thereafter, without seeking to put his mortgage in suit, sued the fourth mortgagee to recover the amount of the surplus sale-proceeds withdrawn by the latter: Held, that the plaintiff could not succeed on this footing. *Berhamdeo Pershad v. Tara Chand*, I. L. R. 33 Calc. 92, referred to. Cl. (e) of proviso to sub-s. (1) of s. 73 of the Civil Procedure Code does not apply to this case as the Plaintiff was not the holder of any decree. *NATHAN SAO v. ANNIE BESANT* (1913)*

19 C. W. N. 535

7. SUBROGATION.

Subrogation—Third mortgagee advancing money for discharge of first mortgage—Application of part only towards discharge—Priority over mesne mortgagee to that extent. A mortgagee who advances money

MORTGAGE—*concl.***7. SUBROGATION—*concl.***

towards the discharge of a first mortgage on a property is entitled to priority over an intermediate mortgagee to the extent to which the money advanced by him went towards discharging the first mortgage. *Rupali v. Audumlam, I. L. R. 11 Mad. 315*, followed. *Hanumanthayya v. Menat-chi Naidu, I. L. R. 35 Mad. 183*, referred to. *SANINATHA PILLAI v. KRISHNA IYER (1913)*

I. L. R. 38 Mad. 548

8. USUFRUCTUARY MORTGAGE.***Usufructuary mortgage***

—Covenant to pay money due on simple mortgage before redemption of the usufructuary mortgage—Suit on simple mortgage barred by limitation—Redemption of usufructuary mortgage. Plaintiff executed a usufructuary mortgage and later executed a simple mortgage in favour of the defendant. In the latter bond he covenanted not to redeem the usufructuary mortgage till he had paid the money due on the second bond. The present suit was brought to redeem the usufructuary mortgage at a time when if the defendant had to sue on the simple mortgage it would have been barred by limitation. *Held*, that the plaintiff was entitled to redeem the first mortgage without paying money due on the second bond. *KASHI RAM v. KASHI RAM (1915)*

I. L. R. 37 All. 634

MORTGAGE BOND.

See RECEIPT . I. L. R. 42 Calc. 548

MORTGAGE DEBT.

See CIVIL PROCEDURE CODE (Act V of 1908), ss. 11, 47 . I. L. R. 37 Bom. 41

MORTGAGE DECREE.

See INSOLVENCY . I. L. R. 42 Calc. 72

MORTGAGE-DEED.

See STAMP ACT (II of 1899), s. 2 (17), etc. . I. L. R. 38 Mad. 043

See TRANSFER OF PROPERTY ACT (IV of 1882), ss. 60 AND 98.

I. L. R. 39 Mad. 667

—executed by pardanashin ladies—

See TRANSFER OF PROPERTY ACT (IV of 1882), s. 59 . I. L. R. 37 All. 471

MORTGAGE SUIT.

See COMPROMISE . I. L. R. 42 Calc. 801

See JURISDICTION . I. L. R. 42 Calc. 110

MORTGAGEE.

See MORTGAGE . I. L. R. 38 Mad. 548

See TRANSFER OF PROPERTY ACT (IV of 1882), ss. 10 AND 98.

I. L. R. 38 Mad. 667

—disposition of—

See CONTRACTUARY MORTGAGE.
I. L. R. 38 Mad. 903

MORTGAGEE—*concl.*

—holding two mortgages—

See TRANSFER OF PROPERTY ACT (IV of 1882), ss. 61, 83 AND 92.

I. L. R. 38 Mad. 927

—is a creditor—

See MORTGAGE BY MIMON.

I. L. R. 38 Mad. 1071

rights of—

See NORTH WESTERN PROVINCES RENT ACT (XII of 1881).

I. L. R. 37 All. 444

MORTGAGEE IN POSSESSION.

See TRANSFER OF PROPERTY ACT (IV of 1882), ss. 60 AND 91.

I. L. R. 38 Mad. 310

MORTGAGOR AND MORTGAGEE.

See CIVIL PROCEDURE CODE (Act V of 1908), ss. 11, 47 . I. L. R. 39 Bom. 41

MOSQUE.

See MAHOMEDAN LAW—MUTAWALLI.

I. L. R. 38 Mad. 481

MOVEABLE PROPERTY.

See MORTGAGE . I. L. R. 38 Mad. 18

—wrongful seizure of—

See LIMITATION ACT (IX of 1908), Sec. 1, Arts. 20, 62 AND 130.

I. L. R. 38 Mad. 972

MUNICIPAL BOARD.

See REGULATION (V of 1864), ss. 83 AND 141.

I. L. R. 37 All. 220

MUNICIPAL COUNCIL.

Adverse possession, against—Nature of adverse possession—Right to a well—Paid over a drain—Right of Municipality to street, drains, etc.—Nature of the right—Right of Government—Adverse possession against Government—Length of possession—Paid, an encroachment or destruction to drain, street, etc.—Right of municipality to remove encroachment, even when right to site of well barred—No injunction against Municipal Council—Opposed right to remove encroachment—The Madras District Municipalities Act (IV of 1884)—Indian Limitation Act (XV of 1877), Art. 166 A—Amending Act (XI of 1908)—Declaration—A person can acquire a title to the site of a well over a drain in a street vested in a municipality by adverse possession against the municipality for the prescriptive period, which was 12 years before the act. 110-A of the Indian Limitation Act (XV of 1877) was passed in 1908 under Act XI of 1908. The right of a Municipal Council to the street and the drains is not a mere right of easement but is a special right of property in the law given only unknown to law but created by statute. Although it is not given to the municipality to give up the rights of the public by any act of their own, they

MUNICIPAL COUNCIL—*conld.*

affect the capacity of a person in adverse to acquire rights which would affect the the question whether possession has been or not does not depend upon the needs or interests of the owner but on the character of possession of the person in possession. Fugitive—important act of possession would not be effective to make the possession adverse if the Municipal Council had no possession of the space above the drain right of user for the discharge of its with respect to the drains, still the plainperson in possession of the pial would ht to it against all but the true owner the Government in this case, but as the Government the plaintiff had not a title as he had not been in adverse for sixty years. Although the plaintiff ed a title to the site of the pial by adssion as against the Municipal Council, f the latter to the drain under the pial n affected, and the Council was entitled the pial as an encroachment or obstrucs. 168 of the Madras District Municipi. The prayer of the plaintiff for an against the Municipal Council could not e granted, nor could the prayer for of title be granted, as it was only inthe substantial relief asked for, namely, n which was refused. *Sundaram Ayyar Municipal Council of Madura*, I. L. R. 35, followed. *Rolls v. Vestry of St. Martyr, Southwark*, 14 Ch. D. 735 at 796, *Municipal Council of Sydney v. [8] A. C. 457*, and *Midland Railway v. [1] 1 Ch. 738*, referred to. *BASAWES v. THE BELLARY MUNICIPAL COUNCIL*. I. L. R. 38 Mad. 6.

M. COURTS.

jurisdiction of—

CIVIL PROCEDURE CODE (ACT V OF 1908), s. 86. I. L. R. 38 Mad. 635

M. OFFICER.

dismissal of—

DISTRICT MUNICIPAL ACT (BOM. III OF 1901), ss. 2, 46 AND 167.

I. L. R. 39 Bom. 600

M. TAXES.

MORTGAGE. I. L. R. 38 Mad. 18

M. UTILITY.

DISTRICT MUNICIPAL ACT (BOM. III OF 1901), ss. 2, 46, 167.

I. L. R. 39 Bom. 600

adverse possession against—

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884), s. 168.

I. L. R. 38 Mad. 456

PAKKI ADAT TRANSACTIONS.

I. L. R. 39 Bom. 1

MUNSHI.

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 35.

I. L. R. 37 All. 450

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913).

s. 3—*Construction of Statute—Whether effect retrospective—Wakf—Mahomedan Law.* The Mussalman Wakf Validating Act, 1913, has no retrospective effect and consequently the old law applies to wakfs created before the passing of that Act. *AMIRBIBI v. AZIZABIBI* (1914)

I. L. R. 39 Bom. 563

MUTAWALLI.

See CIVIL PROCEDURE CODE (1908), s. 92.

I. L. R. 37 All. 86

See MAHOMEDAN LAW—MUTAWALLI.

MUTT, HEAD OF.

Lease in perpetuity of mutt properties, validity of—Right of successors to dispute, whether void or voidable—Confirmation by immediate successor—Right of the latter's successor to repudiate the same—Suit to set aside, if necessary—Limitation Act (XV of 1877), Arts. 142 and 144—Nature of the estate of a matathipathi (head of a mutt), if an absolute estate or estate for life—Local Boards Act (V of 1884), ss. 63, 66 and 73—The Madras Revenue Recovery Act (II of 1864), ss. 32 and 42—Sale for arrears of road-cess—No notice to inamdar but to tenant—Sale irregular, not without jurisdiction—Suit to set aside sale—Limitation Act (XV of 1877), Art. 12—Revenue Recovery Act (II of 1864), s. 59. The head of a mutt made an alienation by way of a lease in perpetuity in 1872 of some lands which had been granted as inam for the support of the mutt, and died in 1890; his immediate successor in the office received the rent reserved by the old lease from the lessee's transferees from 1893 and treated the occupants under the old lease as the tenants until his death in 1906; the latter's successor in office brought the present suit in 1908 to set aside the lease and recover possession of the inam lands from the defendants who were sub-lessees or assignees from the original lessee and from the fifth defendant who was a purchaser in a revenue sale of some of the inam lands which were sold in May 1902 for arrears of road-cess due under the Local Boards Act (V of 1884). *Held*, that the suit was not barred by limitation, except as regards the lands which were sold in revenue sale. A permanent lease is in excess of the powers of the head of a mutt. An alienation by the head of a mutt is not necessarily void and of no effect but is good for the life-time of the alienor. A matathipathi (head of a mutt) is not a tenant for life but is in the position of one who, though in a certain sense owner in fee simple, yet in many respects has only the powers of a tenant for life. An alienation by the head of a mutt is voidable by the alienor's successors in very much the same way that an alienation by a Hindu widow in excess

MUTT, HEAD OF—contd.

of her powers is voidable by her successors. The successors of a matathipathi cannot validate a case of his predecessor so as to bind his successors, he validates the lease only for the period during which he holds the office or avails it altogether. *Abhiram Govanni v. Shyama Charan Nandi*, 1. L. R. 30 Calc. 1003, *Narayana Upada v. Ven. Lalaramanna Bhatta*, 23 Mad. L. J. 260, *Vidyapurna Tirthaswami v. Vidyandithi Tirthaswami*, 1. L. R. 27 Mad 43, and *Kailasam Pillai v. Nataraya Thambiran*, 1. L. R. 33 Mad 265, followed. The corpus of the mutt property is inalienable except in special circumstances, but the income subject to the upkeep of the mutt, is at the absolute disposal of the matathipathi (see *Vidyapurna Tirthaswami v. Vidyandithi Tirthaswami*, 1. L. R. 27 Mad. 435). Where owing to the failure of the holders of a portion of the mutt lands to pay the local cess due under the Local Boards Act (V of 1884), the Revenue officers sold some of the mutt lands without giving notice of the proceedings to the head of the mutt as the defaulter but notice was given to the tenant in occupation of the lands, the sale was irregular but not one held without jurisdiction, and was consequently liable to be set aside, but the suit to set aside the same was barred as not brought within the time allowed by s. 59 of the Madras Revenue Recovery Act (II of 1864) or Art 12 of the second Schedule of the Limitation Act (XV of 1877) *Ramachandra v. Pitchaikanni*, 1. L. R. 7 Mad 434, *Chinnasami Mudali v. Tirumalas Pillai and the Secretary of State for India*, 1. L. R. 25 Mad 572, *Mad. Laryun v. Narhari*, 1. L. R. 25 Bom. 337, and *Bisoy Gopal Muljerji v. Krishna Mahishi Datta*, 1. L. R. 34 Calc. 329, referred to. *Per Sadasiva Ayyar*, J.—The position of a matathipathi is not

ing to an English Bishop (a Corporation sole under the English Law), including his savings from the revenues of the benches devolve upon his legal representatives or heirs, the savings of matathipathi devolve upon the succeeding matathipathi. The procedure laid down by the Revenue Recovery Act (II of 1864) has been incorporated into the Local Boards Act by s. 70 of the latter Act; but the substantive provisions in the Revenue Recovery Act (as. 32 and 33) that the sale for the recovery of arrears of land revenue from the land from all incumbrances and from all favourably rented leases do not apply to a sale under the Local Boards Act. See *Ramachandra v. Pitchaikanni*, 1. L. R. 7 Mad 434, *Chinnasami Mudali v. Tirumalas Pillai and the Secretary of State for India*, 1. L. R. 25 Mad 572, and *Mad. Laryun v. Narhari*, 1. L. R. 25 Bom. 337.

1. L. R. 38 Mad. 356.

N**NAVIGABLE RIVER.**See *FISHERY*

1. L. R. 42 Calc. 459

NEGLIGENCE.See *HOBBS*

19 C. W. N. 918

See *PEVAL CODE* (ACT XLV for 1860), ss. 337, 338.

1. L. R. 39 Bom. 523

See *RAILWAY*.

1. L. R. 39 Bom. 191

of agent, damages for—

See *TRANSFER OF PROPERTY ACT* (IV of 1882), s. 6 (e).

1. L. R. 38 Mad. 138

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

s. 28—*Promissory note by agent, without any indication of execution as agent—Personal liability of executant*—Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise, that he executes it as agent of another or that he does not intend thereby to incur personal responsibility, he is liable personally on the promissory note according to s. 28 of the Negotiable Instruments Act. Merely describing oneself in the note as the holder of a power of attorney from another does not show that the power included a power to sign promissory notes or that the note was signed in pursuance of the power. Applicability of English Law on the subject considered. *KORRT NAICKER v. GORALA ATTAR* (1013)

1. L. R. 38 Mad. 482

— s. 57—

See *DEED*.

1. L. R. 38 Mad. 746

NEPAL.

whether a "Foreign State"—

See *EXTRADITION WARRANT*.

1. L. R. 42 Calc. 763

NEW CASE.See *REMAND*.

1. L. R. 42 Calc. 889

NEW TRIAL.

application for—

See *PRESIDENTY SMALL CAUSE COURTS ACT* (XV of 1862), ss. 9, 33.

1. L. R. 38 Mad. 523

NON-TRANSFERABLE HOLDING.

1. *Question of transferability if arises between vendor and vendee and between vendee and co-sharer landholder*. Plaintiffs who had purchased certain shares in an alleged non-transferable holding partly in execution of a mortgage decree against one tenant and the rest by private alienation from another, having sued for partition, the case of one of the shares appeared to rest on the ground that they had been recognised as tenants of the whole holding by some of the co-sharer landholders, whilst the plaintiffs also were found to have obtained recognition from some of the co-sharer landholders. The District Judge gave the plaintiffs a decree for an interest joint-tenants to that of the co-sharer landholders who had recognised them. Held, that no question

NON-TRANSFERABLE HOLDING—*concl'd.*

of transferability of the holding arose in the case and the plaintiffs in this suit were entitled to get all the interest they purchased from their vendors. *RAJAB ALI v. DINA NATH SHAHA* (1915)

19 C. W. N. 1305

2. *Mortgage of—Purchase of holding by co-sharer landlord in execution of decree for his share of rent—Money-decree—Question of transferability, if arises.* In a suit to enforce his mortgage by the mortgagee of an occupancy holding against co-sharer landlords, who since the date of the mortgage purchased the holding in execution of a decree for their share of the rent, the question of transferability does not arise. *CHANDI PRASANNO SEN v. GOUR CHANDRA DEY* (1915)

19 C. W. N. 1307

NORTH-WESTERN PROVINCES ACTS.

See UNITED PROVINCES AND OUDH ACTS.

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

Mortgage of occupancy holding—Relinquishment—Rights of mortgagee. An occupancy tenant mortgaged his occupancy holding at a time when the Rent Act of 1880 was in force. In the year 1911, he entered into an agreement with his zamindars to relinquish his rights with the object of defeating the rights of the mortgage: *Held*, that the relinquishment was ineffectual as against the mortgagee. *Jaiyopal Narain Singh v. Uman Dat*, 8 All. L. J. R. 695, approved. *BRIJ KUMAR LAL v. SHEO KUMAR MISRA* (1915)

I. L. R. 37 All. 444

NOTICE.

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

See CONSTRUCTIVE NOTICE.

See HUNDI SHAH JOG.

I. L. R. 39 Bom. 513

See INSOLVENCY.

I. L. R. 42 Calc. 72

See LIMITATION ACT (IX OF 1908), s. 28, ART. 47

I. L. R. 38 Mad. 432

See RESUMPTION.

I. L. R. 39 Bom. 279

of sale for arrears of road-cess—

See MUTT, HEAD OF.

I. L. R. 38 Mad. 356

1. *Appeal—Preliminary objection—Suit for possession of land by several plaintiffs—Decree for joint possession—Failure to serve notice on some of the plaintiffs-respondents—Direction of Court dismissing appeal against them—Effect of such dismissal on the whole appeal.* Where in an appeal by the defendants against a decree for joint possession of land passed in favour of five plaintiffs there was a failure to serve notices of the appeal on two of the plaintiffs-respondents and the result was that the Court

NOTICE—*concl'd.*

directed the appeal to be dismissed in so far as those two plaintiffs were concerned, and the appeal came on for disposal against the remaining plaintiffs-respondents: *Held*, that the appeal could not proceed and it was accordingly dismissed. *BASER SHEIKH v. FAZLE KARIM BISWAS* (1914)

19 C. W. N. 290

2. *Service of notice by registered post—Post mark, evidentiary value of, in absence of oral evidence as to date of posting and receipt at office of destination—Endorsement by post office returning registered cover as refused by addressee, admissibility of—Presumption if arises from such endorsement as to date of tender to addressee.* That the preponderance of judicial authority is in favour of the view that what purports to be the impression of a post office seal on an envelope which has been posted may be presumed to be genuine, at any rate, when its genuineness is not expressly questioned; that the post mark when proved or assumed to be genuine implies an assertion that the date on the mark is the date of affixing it, that it is evidence that the place or office mentioned therein was actually the place where it was affixed and from the date in the post mark of the office of posting on the cover it might be inferred that the letter was posted at that office on that date and from the date in the post mark of the office of destination it might be inferred that the letter reached that office on that date, but the endorsement on the cover was not admissible in evidence in proof of the allegation that the cover was tendered to and refused by the addressee on the date of the endorsement and in the absence of any evidence on this point and the cover being addressed to the defendant 'at his place of business which there was nothing to show was his residence within the meaning of s. 106, the plaintiff failed to prove that the notice was duly served on the defendant. That proof of the fact that a letter correctly addressed has been posted and has not been received back through the Dead Letter Office may justify the presumption that it had been delivered in due course of mail to the addressee, but proof of the fact that a letter has been duly posted and has been returned by the Postal authorities does not justify the presumption that it has been so returned, because it has been refused by the addressee, much less is there a presumption that the cover has been tendered to the addressee on a particular date. The presumption mentioned in s. 114 of the Evidence Act is not a presumption of law but a presumption of fact and whereas in the present case the defendant pledges his oath that the cover was never tendered to him the Court could not treat the presumption of regularity of official business as conclusive against him. *GOBINDA CHANDRA SHAHA v. DWARKA NATH PATITA* (1914)

19 C. W. N. 489

NOTICE OF SUIT.

See UNITED PROVINCES COURT OF WARDS ACT (III OF 1899), s. 43.

I. L. R. 37 All. 13

NOTIFICATION.

— defect in—

See SALE FOR ARREARS OF REVENUE.

I L R. 42 Calc. 597

NUISANCE.

See EASEMENT . I L R. 42 Calc. 40

NULLITY OF DECREE.

See DECREE I L R. 39 Bom. 34

O

OATHS ACT (III OF 1873)

— ss 5 and 13—Evidence, admissibility of where witness not sworn. The evidence of two children aged eight and six years was admitted against an accused person without the children having been sworn or affirmed. *Held*, that in view of s. 13, Indian Oaths Act, the failure to administer oath or affirmation did not render the evidence inadmissible. *Queen Empress v. Iero perumal*, I L R. 10 Mad. 105 (PARKER, J.) followed. *Queen Empress v. Maru*, I L R. 10 All. 207, dissented from. *Per CANTAM* S. 5 of the Oaths Act is imperative and if a Court holds that a person may lawfully give evidence, it is the duty of the Court to administer oath or affirmation to that witness. *Re CHINA VELKADU* (1913)

I L R. 38 Mad. 550

OBSTRUCTION

See MUNICIPAL COUNCIL.

I L R. 38 Mad. 6

See PENAL CODE (ACT XLV OF 1860)

s. 293 I L R. 38 Mad. 205

OCCUPANCY HOLDING

See AGRA TENANCY ACT (II OF 1901) s.

20, CL (2) I L R. 37 All. 278

See AGRA TENANCY ACT (II OF 1901),

s. 22 I L R. 37 All. 7. 638

See NORTH WESTERN PROVINCES RENT

ACT (XII OF 1881)

I L R. 37 All. 444

1. — — — — — Non transferable occupancy holding, whether derivable by will—*Benegal Tenancy Act* (XIII of 1885), ss. 6, 175, and s. (3) of (d)—*Held*, if conveyed by testator's act from claiming inheritance under the statute. A non transferable occupancy holding cannot be the subject of a valid testamentary disposition. In the case of a testamentary devise of such a holding, the heir at law is not debarred by the doctrine of estoppel from questioning its validity. *Hari Das Bairo, v. Laxmi Chandra Das*, 12 C B N 1016, 3 C L J 461, not followed. *AMULYA BAIKAT SIKAR v. TAKINI NATH DAS* (1914)

I L R. 42 Calc. 254

2. — — — — — Non transferable by custom or local usage, if can be sold when y or possi-

OCCUPANCY HOLDING—*contd*

ally, in execution of decree obtained by co-sharer landlord when raiyat objects to sale. A co-sharer landlord is not entitled to sell the whole or part of an occupancy holding not transferable by custom or local usage in execution of a decree obtained for his share of rent, when the raiyat objects to the sale. The Full Bench decision in *Doyamoy Das v. Annada Mohan Roy*, 13 C B N 271, by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place and that the holding cannot be sold in execution of such a decree when the raiyat objects to the sale before it takes place. This view is in accord with the ratio of *Dui*

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decision is applicable to an involuntary transfer of the whole as well as of a part of the holding.

BADRANNESSA CHOUDHURANI v. ALAM GAZI (1915)

19 C. W. N. 814

3. — — — — — *Revenue Sale Law* (Act XI of 1859) s. 37—Occupancy raiyats of fixed rates—Purchaser—Doctrine of Protection—Its extension. The protection of occupancy raiyats at fixed rates, referred to in s. 37 of the Revenue Sale Law (Act XI of 1859) is not one of the ordinary exceptions in that section. It is a proviso regulating the determination of the Legislature that no purchaser shall dislodge any of the permanent tenants on the land who are in actual occupation of the soil and are cultivating it. This doctrine of protection has recently been extended to ordinary occupancy raiyats. *Natal Chandra Roy v. Jaiswan Bibi*, I L R. 31 Cal. 725, referred to. *Alal Nath Naskar v. Surendra Nath Dutt*, 13 C B N. 1055, distinguished. *ABDUL GANI CROWHURAY v. MUKHIL ALI* (1914) I L R. 42 Calc. 743

4. — — — — — Transferability of part or whole—Consent of landlord—Operation of transfer as against raiyat (land and other persons)—*Credit Procedure Code* (Act XI of 1882) s. 211—*Legal Tenancy Act* (XIII of 1885) s. 67. In transfers, for value, of occupancy holdings, as against free owners or local usage, (1) The transfer of the whole or a part is operative against the raiyat, (a) Where it is made voluntarily, (b) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside. A sale is made involuntarily, where it is in execution of a money decree, but not if a decree founded on a mortgage or charge voluntarily made. (2) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat, provided the landlord has given his previous or subsequent consent. Where the transfer is a sale of the whole holding, the landlord, in the absence of a consent, is estopped and is not entitled to enter into the land, but where the transfer is of a part only of the holding, or not by way of sale of the whole, though he has not consented, he is not estopped and is entitled to recover possession of the whole holding.

OCCUPANCY HOLDING—concl'd.

there has been (a) an abandonment within the meaning of s. 87 of the Bengal Tenancy Act, or (b) a relinquishment of the holding, or (c) a repudiation of the tenancy. Whether there has been a relinquishment or repudiation or not depends on the substantial effect of what has been done in each case. (iii) The transfer of the whole or a part is operative as against all other persons where it is operative against the raiyat. *DAYAMAYI v. ANANDA MOHAN ROY CHOWDHURY* (1914).

I. L. R. 42 Calc. 172

5. *Receipt of rent by landlord from mortgagee of, effect of—Recognition.* Receipt by the landlord of an occupancy holding, with or without protest, of rent deposited by the mortgagee as such is a recognition of the rights of the mortgagee and the landlord cannot evict the mortgagee as a trespasser. *MATOOKDHARI SHUKUL v. JUGDIR NANAIN SINGH* (1914).

19 C. W. N. 1319

OCCUPANCY-RAIYAT.

Appointed ijaradar, if loses occupancy-right. The mere fact that a raiyat who has a right of occupancy in his agricultural lands is at the same time a rent-collector of the village and is remunerated as such does not deprive him of his right of occupancy. *DURGA PRASAD SINGH v. HARI RAM MAHTO* (1914).

19 C. W. N. 578

— at fixed rates—

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 745

OCCUPANCY RIGHT.

Mokuridar cultivating land for more than 12 years—Protection from eviction. Where a mokurari tenure was created in 1890 by an under-tenure-holder in favour of a tenant who went on cultivating the land for 12 years: Held, in a suit by a purchaser of the under-tenure under Act VIII of 1865, that the tenant acquired an occupancy-right and retained it even though the mokurari right which he had also obtained was extinguished by operation of s. 16 of Act VIII of 1865 and the tenant was not liable to be ejected. *Nilmadhab v. Shibu*, 13 W. R. 410, and *Emam Ali v. Ator Ali*, 22 W. R. 133, followed. *Jogeshwar Mazumdar v. Abed Mahomed Sirkar*, 3 C. W. N. 13, distinguished. *BAMA CHARAN GORAI v. RAM KANAI DUBEY* (1914).

19 C. W. N. 858

OFFICIAL ASSIGNEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10.

I. L. R. 39 Bom. 568

— sale by—

See INSOLVENCY.

I. L. R. 42 Calc. 72

OFFICIAL RECEIVER.

— order of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) SS. 15 TO 22, 46, 52

I. L. R. 38 Mad. 15

OFFICIAL WITNESS.

— privilege of—

See CHARGE.

I. L. R. 42 Calc. 957

OLD WASTE GROUNDS.

— ejectment from—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 3 (7), 153 AND 157.

I. L. R. 38 Mad. 163

ONUS OF PROOF.

See BURDEN OF PROOF.

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 42 Calc. 710

See EVIDENCE ACT (I OF 1872), S. 92, AND PROV. (2)

I. L. R. 39 Bom. 399

See FRAUD.

I. L. R. 37 All. 537

See HINDU LAW—MINOR.

I. L. R. 38 Mad. 166

See KASBATIS.

I. L. R. 39 Bom. 625

ORAL AGREEMENT.

See EVIDENCE ACT (I OF 1872), S. 92, AND PROV. (2).

I. L. R. 39 Bom. 399

ORAL SALE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 4 AND 54.

I. L. R. 38 Mad. 1158

ORDINANCE.

— 1914—VI.

See COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE.

I. L. R. 42 Calc. 1094

ORIGINAL COURT.

— competency of, to entertain application—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLV, RR. 15 AND 16.

I. L. R. 38 Mad. 832

ORIGINAL SIDE.

Decision of Judge of, if binding on another Judge on Original Side. A Judge on the Original Side of the High Court should follow the decision of another Judge sitting on the same side, but such decision is not binding on the Judges hearing appeals from the Original Side. *CHATTRAM RAMBILAS v. BRIDHI CHAND KESRI CHAND* (1915).

I. L. R. 42 Calc. 1140

19 C. W. N. 820

ORISSA ZAMINDARI.

— estates in—

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 42 Calc. 710

OUTCASTE.

See HINDU LAW—JOINT FAMILY.

I. L. R. 38 Mad. 684

OWNER.

See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1878), s. 2.
L. L. R. 33 Mad. 1128

P

PACHETE RAJ.

*Ahorposh grant, re-
sumption of—Custom—Grant of pawns by Raja after
Ahorposh grant in grantee's lifetime—Death of Raja
if entitles putnidar to resume in grantee's lifetime—
Option of heir of grantor to resume in grantee's
lifetime—Res judicata—Transfer of Property Act
(IV of 1882), s. 43* On the evidence, held, that the
Plaintiffs had failed to establish that by custom a
Ahorposh grant under the Pachete Raj lapses in the
grantee's lifetime upon the death of the grantor
and the land reverts forthwith to the Raj but
that there was good grounds for the view that a
maintenance grant in the Pachete Raj is for the
life of the grantee, but is liable to be resumed by
the successor of the grantor should the latter die
during the lifetime of the grantee. Two cases in
Punjabum Amari v Gurunaran Deo, 6 Mac Sel
Rep 166, Gurunaran Deo v Unund Lal Singh &
Mac Sel Rep 354, and Asand Lal Singh v Gurud
Narayan, 5 Moo I A 52, do not establish the
custom as alleged by the plaintiff. Where the
grantor of a Ahorposh grant purported to resume
the grant in the lifetime of the grantee and then
granted a pawn in respect of the subject matter to
another person, and on the grantor's death
the putnidar sued to resume the subject matter of
the grant from the grantee. Held, that it was not
a case where s. 43 of the Transfer of Property
Act could apply since the heir of the grantor was
still free to exercise his option to resume or not
if a transferor without title has once become

the Court expressing the opinion that the Ahorposh
grant was not resumable in the grantee's lifetime.
Held, that the decision did not bar the putnidar's
suit to recover possession brought after the donor's
death. CHETIA BAHIRA SARKER v PIRANA CHANDRA
CHOLUBHAT (1914) 10 C. W. N. 1272

PAKKI ADAT TRANSACTIONS.

*Buyer, intention to,
and negatived—Pakki adat, position of
client—Transactions by Muslim—Custom* The cus-
toms of the pakki adat relationship does not
itself negative the existence of an understanding
between the adatia and Fakiat that no
delivery should be given or taken under forward
contracts and that only differences should be
recovered. Qua the client the pakki adatia is a

PAKKI ADAT TRANSACTIONS—contd.

principal and not a disinterested middle man
bringing two principals together. The question
which has to be decided is what on the evidence
was the common intention of the parties with re-
gard to the settlement or completion of the transac-
tions in dispute. A defendant who has success-
fully pleaded a lawful defence is entitled to his
costs. Bajorji Ruttonji v Jikagundas Parash-
ram, 1 L R 38 Bom 204, followed. CHUGHMAL
BALKISONDAS v JAIKARAYAN KANAIYALAL (1913)
L. L. R. 39 Bom. 1

PALAS OR TURNS OF WORSHIP

*Mortgage—Transfers
of palas—Custom—Aholgal Temple—Village
of mortgagor, even if trustee—Essential attributes
of valid custom—Public policy, consideration (s—
Omnia grolandi—Civil Procedure Code (Act I of
1908), O XXXI—Chattel—Intangible property,
foreclosure of mortgage of—Pledge Per Mooker-
jee J (BEACHCROFT J reserving opinion.) A
mortgagor, even when acting in a public capacity
and not for his own benefit, is entitled to deny
his title, and cannot set up as a defence for him self
against the mortgagee that the property so mort-
gaged is trust property which he had no right to
mortgage. Doe v Hoare, L. R. 3 Q B 760 61
R R 327, followed. This principle is inapplicable
where the mortgage is void as contrary to sta-
tute. Borrower v Case 14 Ch. D 432, followed.
Trusts for a public purpose are not, by the nature
of their office, protected from the operation of
statute as against the assignees of the original
parties to the deed in question. Doe v Hoare,
L. R. 3 Q B 760 61 R R 327, Webb v Hoare,
L. R. 3 Q B 642, and Higgs v Asam Tea Co.,
L. R. 3 Ex 337, referred to. (View indicated by
JAYAKER J in Mallika v Ratanmuni, 1 C W N
493, not accepted.) Per Mookerjee and BEACH-
CROFT JJ. A custom to be valid must have four
essential attributes: (i) it must be immemorial;
(ii) it must be reasonable, (iii) it must have conti-
nued without interruption since its immemorial
origin, and (iv) it must be certain in respect of
its nature generally, as well as in respect of the
locality where it is alleged to obtain and the per-
sons whom it is alleged to affect. Tynn v Smith
2 id. 4 El. 466, followed. A custom cannot be
enlarged by parity of reasoning. Jethava v Jetha-
ham, 11 Mod 145, Pradyot v G. S. Arichao,
1 L. R. 31 Cal 322, referred to. A custom
originating with a time of memory, even though
existing in fact, is void at law. Mayor of London
v Cor, L. R. 2 H L 332, followed. Evidence
showing exercise of a right in accordance with an
alleged custom as far back as living testimony
can go, raises the presumption, though not a re-
buttable one, as to the immemorial existence of
the custom. Eastard v Smith 2 Mod. 4 1 12,
Mortor v Jones, [1911] 2 Ch. 554, followed. If the
existence of the custom has been proved for a
long period, the court has in the present case to
deduce the custom to demonstrate its immemo-
rality. If a custom be established from legal
and legal reason warranted by authority of law*

PALAS OR TURNS OF WORSHIP—concl'd.

it has no force in law. When a custom is said to be void as being unreasonable, the unreasonable character of the alleged custom conclusively proves that the usage, even though it may have existed from time immemorial, must have resulted from accident or indulgence, and not from any rights conferred in ancient times. *Salisbury v. Gladstone*, 9 H. L. C. 692, followed. The period for ascertaining, whether a particular custom is reasonable or not, is the time of its possible inception. *The Tanistry Case*, (1608) Davis 29, followed. In practice, the Kalighat Temple *palas* have been transferred during at least 90 years though in a limited market which those alone can enter who are qualified to become shebait by birth or marriage, the time when this custom originated being unknown. Proof of the existence of a custom need not be carried back by direct evidence to the year 1773 when the Supreme Court was established, or even to 1793 when the first Regulations were passed by the Indian Legislature. The customary right to make a sale, mortgage, gift or lease of a *pala* in favour of persons within a limited circle (the transferee being under precisely the same obligation to the endowment as the transferor himself), is closely associated with and possibly developed out of the heritable, devisable, and partible character of a *pala*. *Janokee v. Gopaul*, I. L. R. 2 Calc. 365, referred to. A custom of this description clearly cannot be characterised on any rational grounds as unreasonable or opposed to public policy. Foreclosure, as a remedy of the mortgagee, is not confined to mortgages of *land*; it is equally applicable to mortgages of *chattels*. *Harrison v. Hart*, 1 Comyn. 393,; 2 Eq. Cas. Abr. 6, followed. A mortgage of *intangible* property is entitled to foreclose the mortgagor quite as much as a mortgagee of *chattels*. *MAHAMAYA DEBI v. HARIDAS HALDAR*, (1914)

I. L. R. 42 Calc. 455

PALMYRA JUICE.

— lease of, whether lease of the moveable property—

See REGISTRATION ACT (III OF 1877) s. 17 (1) (c) AND (d).

I. L. R. 38 Mad. 883

PARDANASHIN.

See PRESENTATION OF COMPLAINT.

I. L. R. 42 Calc. 19

— examination of—

See COMPLAINT. I. L. R. 42 Calc. 19

1. ——— Mortgage by, in favour of her legal adviser—Transaction to be closely scrutinised—Onus—Proof—that deed was explained to executant and she understood it—Relations cognisant of execution—Inference that deed properly explained, if follows—Stipulation in deed to substitute for properties mortgaged partitioned share of estate under partition, if inoperative—Pleader and client relationship if ceases on passing of judgment, when the time for appealing has not expired. *T*, a *pardanashin* lady, and *S*, her brother, who had been

PARDANASHIN—cont'd.

parties in a partition suit with members of their family were represented in that suit by one *R*, as their pleader. The suit terminated in their favour; but before the time for appeal had expired, property belonging wholly to *T* was mortgaged in favour of *R* to secure an advance of Rs. 8,000, of which Rs. 4,773 was said to have been cash and the balance went mainly, if not entirely, in the discharge of moneys due from *S*. A clause was inserted in the bond to the effect that after the partition should have been effected the property awarded to *T* should be substituted for the mortgaged properties, and it was admitted that the effect of this would be to quadruple the amount of property. There were concurrent findings that this clause was not properly explained to the lady, but the Trial Court held it to be of no consequence as the clause was inoperative. The Trial Judge upheld the deed subject to a reduction of the stipulated interest which he held to be unconscionable, being mainly influenced by the consideration that the relatives of the lady must have been aware of the transaction, because her brother was a co-signatory of the deed and two of her relatives were the identifying witnesses, but the brother was personally interested in carrying through the transaction by which he derived advantage at the expense of the lady, and the other relatives generally were taking gross advantage of her unprotected state: *Held*, that this was a case of the legal adviser to a *pardanashin* woman acting the part of money-lender to her and procuring the execution by her of a mortgage-bond to secure its repayment, and it was difficult to conceive a case in which the Court would be entitled, and indeed obliged, to examine the transaction with closer scrutiny or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed, and that the transaction was a fair and honest one. That the Trial Judge was in error in holding that in the mortgage-bond, if otherwise valid, the clause which was clear in its language stipulating for the substitution of *T*'s partitioned properties for the property mortgaged would be inoperative. That in the circumstances, the relatives of *T* should in no way have been regarded as the defenders of her interests. *MAHABIR PRASAD v. TAJ BEGAM* (1914)

2. ——— Execution of mortgage by—Attestation by witnesses. A mortgage executed by a *pardanashin* lady was attested by her husband and another witness. The husband actually saw the signature being made and the other witness was outside the screen in the same room with the lady and he knew her voice and heard her say "yes" when the document was explained to her. *Held*, that the document was duly attested in accordance with law. *RUKMINI KOERI v. NILMONI BANDAPADHYAYA* (1915)

19 C. W. N. 1309

3. ——— Illiterate, document executed by and drawn up under her instruction

PARDANASHIN—contd.

—Document if to be explained—Presumption of knowledge—Registration—Power of attorney scope of. Where a pardanashin lady took a loan from another pardanashin lady on a mortgage security had the deed drawn up by her own men under her own instruction and then got it registered through her mukhtar and husband authorised to act on her behalf by a general power of attorney. Held that it was not necessary that the contents of the document should have been explained to her after the draft was made but knowledge of the contents was to be presumed especially as the document came from the side of the executant. Held also that in second appeal the High Court can make deductions from acts without disturbing the findings of the lower Appellate Court. Held also that authority to appear in the Registration office implied authority to appear for all purposes authorised by the Registration Act. *BURDAS MOHINI DAS v. GAJALAKSHMI DEBI* (1914) 19 C W N 1330

PARDON

See CRIMINAL PROCEDURE CODE s 339

I L R 37 All 331

See KING'S PREROGATIVE OF PARDON

I. ———— Withdrawal by

to be raised at the trial—Trial of issues of forfeiture of pardon and guilt of accused—Criminal Procedure Code (Act V of 1898) ss 337-339. Under the present law no formal withdrawal of pardon nor formal declaration of its forfeiture are required. If the approver be subsequently proceeded against it is open to him to plead at his trial that the pardon has not, in fact, been forfeited, that is that he has not violated its conditions. The two questions of forfeiture of pardon and of his guilt of the offence in respect of which he received the same may be heard and determined together under the circumstance. *Emperor v. Agha* I L R 39 Bom 611, *Kullan v. Emperor* I L R 32 Mad 173 and *Emperor v. Aban Bhushan Chuckerbutty* I L R 37 Cal 845, referred to. *Emperor v. Banar* AUNJI (1914) I L R 42 Calc 756

2. ———— Failure of approval to comply with terms of the pardon on examination at the preliminary inquiry—Forfeiture of pardon—Commitment of approver along with other accused—Joint trial of approver and others—Plea of pardon taken in the Sessions Court—Proper procedure thereon—Trial of question of forfeiture as a preliminary issue—Power of Jury to determine the point—Criminal Procedure Code (Act V of 1898), ss 298 (1) (c), 337. Where an approver has forfeited his pardon, on his examination at the preliminary enquiry, the Magistrate may put him in the dock, recommence the enquiry and commit him for trial along with the other accused. *Queen Empress v. Vatu* I L R 27 Cal 137, discussed. *Queen Empress v. Frij Vargu* & Man, I L R 20 All 329, *Emperor v. Budhia*, I L R

PARDON—contd.

29 All 24, *Sultan Khan v. King Emperor*, 5 All I L R 331 and *King Emperor v. Bala* I L R 25 Bom 675, followed. When an approver has been committed to the Court of Sessions as an accused he may plead his pardon in bar at the trial and the Judge must first try the issue of forfeiture and take the verdict of the Jury thereon, and then proceed with the trial of accused for the offences charged. *Emperor v. Man Bhushan Chuckerbutty* I L R 37 Cal 845 discussed. *Kullan v. Emperor*, I L R 32 Mad I L R 33 25 Bom 611, and approved.

—Pardon remained in force until its withdrawal by the authority granting it in consequence of the approver failing to observe the conditions of the pardon, but under the present law the result of such failure is that the approver may be put on trial without any formal order of withdrawal or cancellation of the pardon. The plea should be taken at the commencement of the preliminary enquiry and considered by the Magistrate. If he decides against it or if it is not taken before him the approver may raise the plea in the Sessions Court. The

accused. The onus of proof of forfeiture is on the Crown. *Queen Empress v. Man Ch Chandra Saria* I L R 21 Cal 107 declared obsolete. Where, however, the Judge tried the question of forfeiture with the Jury after some evidence on the general issue had been recorded—Held, that the irregularity had not prejudiced the approver or the other accused. *Semle*. When the approver deviates from the conditions of his pardon in the Sessions Court, he cannot be removed from the witness box and placed in the dock as an accused. *Bhushan Rajbanshi v. Emperor* (1914)

I L R 42 Calc 856

PAROL ACCEPTANCE

See STAMP ACT (II of 1902), s 37

I L R 38 Mad 349

PART-PAYMENT

See CHECK, PAYMENT BY

I L R 42 Calc 1043

PARTIES

See CIVIL PROCEDURE CODE (1908), s 29

I L R 37 All 256

See CIVIL PROCEDURE CODE (1908), O. I,

s 10. I L R 37 All 57

See CIVIL PROCEDURE CODE (1908), O. I,

s 10. I L R 37 All 256

See LIMITATION ACT (IX of 1908), s 22

I L R 39 Bom 779

See STAMP ACT (II of 1902), s 37

s 42. I L R 37 All 253

PARTIES—concl'd.

to appeal—

See CIVIL PROCEDURE CODE (1908),
O. XLIII, R. 1. I. L. R. 37 All. 272

Civil Procedure Code
(Act V of 1908), s. 92, O. I., r. 3—Public Religious Trust—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Joinder of parties—Alienee of trustee. Where in a suit under s. 92 of the Civil Procedure Code (Act V of 1908), the second defendant who was the alienee of the trust property, the subject of the suit, contended that the suit should be dismissed as against him on the ground that he was not a necessary party to it:—*Held*, that there is no reason why, having regard to the provisions of O. I., r. 3 of the Civil Procedure Code, the second defendant should not be made a party to the suit nor why, if the decision of the Court is against him, he should not be declared to be a trustee of the trust property and be directed to convey the property. *Budh Singh Dhudhuria v. Nibradaran Roy*, 2 C. L. J. 431, and *Budree Das Mukim v. Choony Lal Johurry*, I. L. R. 33 Calc. 789, distinguished. *Compania Sansinena de Carnes Congcladas v. Houlder Brothers*, [1910] 2 K. B. 354, referred to. *ALI HAFIZ v. ABDUR RAHAMAN* (1915) . . . I. L. R. 42 Calc. 1135

PARTITION.

See BABUANA GRANT.

I. L. R. 42 Calc. 582

See COSTS. I. L. R. 42 Calc. 451

See EXECUTION OF DECREE.

I. L. R. 37 All. 120

See HINDU LAW—PARTITION.

I. L. R. 39 Bom. 734

See LIMITATION ACT (IX OF 1908), SCH.
I, ARTS. 62, 120.

I. L. R. 37 All. 318

See PRE-EMPTION. I. L. R. 37 All. 129

by grandsons—

See HINDU LAW—PARTITION.

I. L. R. 39 Bom. 373

PARTITION—concl'd.

Mondul v. Baikanta Nath Mondul, 10 C. W. N. 839, followed. *Gulkandi Lal v. Manni Lal*, I. L. R. 23 All. 219, not followed. *MUKERJI v. AFZAL BEG.* (1914). I. L. R. 37 All. 155

2. ———— Suit for, if lies without including the whole of the joint properties in the suit—Principle for Courts to follow in such cases—Bengal, Agra and Assam Civil Courts Act (XII of 1887), s. 37. The plaintiffs and the defendants were the joint proprietors of a certain pargana which was partitioned by the Collector. At the time of the partition certain lands which were jungle or submerged were excluded from the partition, and kept joint. The plaintiff brought three suits to have the joint lands partitioned. *Held*, that it cannot be said that the general rule is that a joint owner cannot claim a partition of the joint property without bringing the whole of it under partition. The rule to be applied is much more elastic and what the Court has to consider in cases of this kind under s. 37 of the Bengal, Agra and Assam Civil Courts Act, 1887, is justice, equity and good conscience. *HEM CHANDRA CHOWDHURY v. HEMANTA KUMARI DEBI* (1914)

19 C. W. N. 356

PARTNERSHIP.

dissolution of—

See MINOR. I. L. R. 42 Calc. 225

winding-up of—

See APPEAL. I. L. R. 42 Calc. 914

1. ———— Agreement for joint venture in business—Contract Act (IX of 1872), ss. 239, illustration (a), 249, 251, 252—Liability of co-adventurers against whom there is no document of debt binding on its face—Operations of buying and selling natural to a partnership, and for the partnership—Liability of both defendants on hundis drawn separately by each for payment of his own share of goods—Criterion as to transaction being or not being a partnership transaction. The respondents carrying on business in Mauritius and having separate offices in Bombay made an agreement for one year "for the purpose of doing business in partnership" in brown sugar to be shipped from Mauritius to Hongkong, and there disposed of on commission sale by the appellant, a Bombay merchant with an agency at Hongkong, the profits of the joint venture to be shared by the respondents equally. The shipments were to be made jointly in Mauritius, a half share by each of the respondents, each one drawing hundis against his own half share, and separate account sales of their respective shares to be rendered to them by the appellant who undertook to arrange for the necessary credit if the Banks in Mauritius would not discount the hundis drawn by the respondents; and an endorsement to that effect was made on the agreement and signed by the appellant. The terms of the agreement were carried out and shipments of sugar were made, but in respect of the hundis drawn, by each respondent against his half share recourse was not had first

1. ———— Joint property—*Infructuous suit for partition no bar to a second suit for the same purpose.* In the year 1905 the plaintiff brought a suit for partition of a house held in joint tenancy. The suit was compromised, the defendant agreeing to transfer his rights to the plaintiff for a consideration, and was accordingly dismissed. The compromise, however, was not given effect to, and thereafter the plaintiff brought a second suit for partition. *Held*, that as soon as the defendant failed to carry out the compromise, the parties were relegated to their rights as they existed prior to the compromise. The right to bring a suit for partition, unlike other suits, is a continuing right incidental to the ownership of joint property and the second suit was, therefore, not barred. *Nasrat ullah v. Mujib-ullah*, I. L. R. 13 All. 309, *Bisheshar Das v. Ram Prasad* I. L. R. 28 All. 627, and *Madan Mohan*

PARTNERSHIP—contd.

to the Banks in Mauritius, but the hundis were at once drawn on and accepted by the appellant at Bombay. The shipments resulted in a loss. The first respondent had, when the hundis drawn by him became due, retired them, but the second

suit, by the appellant against the respondents and

the agreement created a "partnership" between the respondents within the definition in s. 239 of the Contract Act (IX of 1872) which governed the case. But it was a partnership of a limited character, and consequently liability to be enforced against one partner, when there was no document of debt which on its face bound him, could only be justified if it was shown that what he did was within the operations natural to the partnership and for the partnership. On the terms of the agreement the purchase of the sugar under it became a purchase for the partnership and any one who sold the sugar or advanced money by

share of the profit he made. The joint adventure began not when the goods were shipped, but from the moment the sugar was bought. The appellant too was acquainted with the whole terms and

of the first respondent himself in cross examination "the sugar purchased was all paid for by the hundis accepted by the appellant." As to the criterion to be applied to the particular facts of each case in order to see whether the transaction is or is not a partnership transaction, the cases of *Goukrate v. Duckworth*, 12 East 421, 426, *Sorlie v. Robertson*, 4 T. R. 720, and *Hoop v. Dubson*, 15 C. B. N. S. 460, in the English Courts; and *Cunningham v. Kinnear*, 2 Pal. App. Cas. 111, *British Linen Company v. Alexander*, 15 D. 277, and *White v. McIntyre*, 3 D. 331, in the Scottish Courts; and *Lell v. Communiaries on the Principles of Mercantile Jurisprudence*, s. 393, were referred to. *KARMALI ABDULLA v. KARIMJIJIJIWANI* (1914) I. L. R. 39 Bom. 261

PARTNERSHIP—contd.

2. *Dissolution of Partnership—Partition, suit for—Dispute as to whether a mortgage bound one or both partners—Compromise admitting debt to be in part payable by each—Suit by Mortgagee decreed against one partner only—Other partner is relieved from paying his admitted share of debt—Payment of whole debt by other partner—Contribution.* Following on a dissolution of partnership between *I* and *B*, *I* sued *B* for partition, and one of the questions in dispute was whether a mortgage of the partnership property by *B* in favour of *N* was payable by *B* alone or by both partners equally. A decree was passed on compromise by which *L* undertook to pay Rs. 8,200 to the mortgagee and *B* that he should free *L*'s portion of the property from the mortgage. *L* paid only Rs. 200 to *N*, who thereafter to enforce his mortgage brought a suit in which it was eventually decided that the mortgage bound only *B*'s share, and *N* was paid off by sale of *B*'s share. *B*'s representatives then sued *L* for Rs. 8,000. *Held*, that by the compromise *L* admitted that the debt due to *N* was a partnership debt whereof *L* was liable to pay Rs. 8,200, and from that moment Rs. 8,200 became a debt due by *L* to *N* for the purpose of adjustment between the ex partners, and it was not open to *L*'s representatives to get out of the compromise by which *L* was bound, by saying that if *N*'s suit had been then decided, *L* would have found himself free of the liability without entering into the undertaking to pay Rs. 8,200. *B* having had to pay what *L* should have, to make good the terms of the compromise *L* was bound to pay it to. *RAMLAL v. NARAJINI DAS* (1914) 10 C. W. N. 193

3. *Business—Suit for contribution by partner for money advanced in satisfaction of debt incurred jointly for partnership purposes, if lost.* The plaintiff and the defendants borrowed money for carrying on a joint business. The creditor obtained a decree against them but executed it against the plaintiff alone and realised the entire amount from him. The plaintiff brought a suit for contribution against each of the defendants for the sum payable by him in respect of the debt. The finding was that the money was borrowed by the plaintiff and the defendants jointly and was applied for the partnership business, that there had been no adjustment of accounts as alleged by the defendants and the plaintiff had not been paid the sum due to him. *Held*, that a suit for contribution was obviously maintainable. That s. 43 of the Contract Act in the

4. *Partner, suit by, against other partners for damages for use and occupation of partnership property, maintenance of, if G, the owner of a mill, entered into a partnership agreement with two other persons in respect of the mill business. The mill was joined at the*

— ss 43 and 73—Indian Forest Act (I
of 1881), except under justification plea of, not
available. The plea of justification provided by
s 79 of the Indian Penal Code (XIV of 1860) is

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 40—*contd.*

available only for an offence punishable by the Penal Code and not for offences punishable by any special or local law and hence the belief of the

s. 75—

See PRACTICE . I. L. R. 39 Bom. 328

s. 80—*Plea of accident—Oaths on ac-*

nation of accused by Court. *Per CHITTY, J* If the accused puts forward a substantive defence of accident within the purview of s. 80, Indian Penal Code, it is incumbent upon him to prove it. Where the evidence as to the deed is authentically convincing, it is immaterial to consider with what motive it was done. *Per BEACROFT, J* There is no provision in the Code of Criminal Procedure for the making of a written statement by an accused in the Sessions Court and the practice of refusing to answer questions and of putting in a written statement is a pernicious one. *KING EMPEROR v DWISENDRA CHANDRA MEKHEER (1915)*

19 C. W. N. 1043

ss. 82, 83—*Offence of rape committed by a boy under fourteen—Presumption* Held that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India. *EMPEROR v PARAS RAM DEAR (1915)*

I. L. R. 37 All 187

s. 88—*Interpretation of—Drunkenness*

—*Knowledge and intent* *Per AYLMER, J* Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were he must be presumed to have intended to cause them. *Per TRAVIS, J—S. 80, Indian Penal Code, must be construed strictly. It provides that the intoxicated person shall be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, but it does not provide that he shall be dealt with as if he had the same intent. Per MANDAT GADABA (1914)*

I. L. R. 38 Mad. 479

ss. 109, 116, 120B—

See MISJOINDER OF CHARGES.

I. L. R. 42 Calc. 1153

ss. 120, 120A, 120B, 121A—

See CHARGE . I. L. R. 42 Calc. 957

s. 120B—*Conspiracy* *FLETCHER, J—*

In cases of conspiracy the agreement between the conspirators cannot generally be directly proved

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 102B—*contd.*

but only inferred from other facts proved in the case. *BEACROFT, J—That on a conviction under s. 120B, Indian Penal Code, if an offence has been committed the punishment is provided by s. 109, Indian Penal Code, and if an offence has not been committed the punishment is limited to the extent provided by s. 116. Semble: Strictly speaking in cases where an offence has been committed in pursuance of a conspiracy there should not be any conviction for conspiracy but for abetment of the offence; for conspiracy followed by an act done to carry out the purpose of conspiracy amounts to abetment. KHAGENDRA NATH CHAUDHRI v KING EMPEROR (1914)*

19 C. W. N. 706

I. L. R. 42 Calc. 1153

s. 182—

See CIVIL PROCEDURE CODE (1908), ss. 63 AND 70, SCH. III.

I. L. R. 37 All 334

s. 185—"Property"—*Exclusive right to sell drugs* Held that a person who had an auction of the right to sell drugs within a certain area under a false name, and when the sale was confirmed in his favour, denied that he had ever made any bids at all, was rightly convicted of an offence under s. 185 of the Indian Penal Code. *QUEEN v RAOODDION, 3 H R Cr 333, referred to EMPEROR v BISHAN PRASAD (1914)*

I. L. R. 37 All 123

ss. 188, 209—*Epidemic Diseases Act (1911 of 1907), ss. 2 and 3—Local Government—Delegation of powers to—Regulations under the Act—Rule 104 of the Regulations ultra vires of the Local Government.* A delegation under r. 104 by the Collector to a Divisional Officer of the power to call upon people to evacuate houses is ultra and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission. *Per NAGARAJA THIRAVI (1915)*

I. L. R. 38 Mad. 602

s. 225B—

See WARRANT, VALIDITY OF

I. L. R. 42 Calc. 703

s. 253—*Obstruction, causing of—* Where necessary to prove any particular individual obstructed. Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and that passengers from passing without inconvenience. *Held, that it is a necessary inference that persons were obstructed and that it is not necessary to expressly prove that any specific individual was actually obstructed. The Queen v. Abdul M. Ali, I. L. R. 8 Mad. 225, not followed. Queen Empress v. Veerappa Chaudh, I. L. R. 29 Mad. 422, commented on. Per VENKATRA (1913)*

I. L. R. 38 Mad. 303

s. 302—*Criminal Procedure Code (1 of 1908), ss. 314, 326—Accused charged with murder—Duty of presiding Judge as to assessing*

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 302—*concl'd.*

for his defence—*Re-trial on the same charge.* The accused who was undefended in the Sessions Court was convicted under s. 302, Indian Penal Code. The case came up to the High Court for confirmation of the sentence of death under s. 374, Criminal Procedure Code, and also on appeal. *Held*, that accused persons charged with murder should not go undefended. The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out. The High Court held that on the evidence as it stood the sentence of death could not be confirmed and directed under s. 376, cl. (b), a re-trial of the accused on the same charge after arrangement being made for his defence. *KING-EMPEROR v. MOHAMMAD ALI SHEIKH* (1915) . . . 19 C. W. N. 556

s. 323—

See BAILIFF. . I. L. R. 42 Cal. 313

ss. 332, 323—*Public servant in the execution of his duty as such—House search by Excise Inspector without a warrant—Assault on Inspector.* An Excise Inspector in searching the house of a person, under the suspicion that he would find cocaine there, committed many irregularities. He had no warrant authorising him to make the search, he had brought only one search witness and he directed a constable to scale the outer wall of the house. The accused assaulted and beat him. *Held*, that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s. 332 of the Indian Penal Code, but were guilty of an offence punishable under s. 323 of the said Code. *Queen-Empress v. Dalip*, I. L. R. 18 All. 246, followed. *EMPEROR v. MUHAMMAD AHMAD* (1915) . . . I. L. R. 37 All. 353

ss. 337, 338—*Hurt caused by rashness or negligence—Hakim—Performance of eye-operation with ordinary scissors—Neglect of ordinary precautions—Partial loss of eye-sight.* The accused, a Hakim, performed an operation with an ordinary pair of scissors, on the outer side of the upper lid of the complainant's right eye. The operation was needless and performed in a primitive way, the most ordinary precautions being entirely neglected. The wound was sutured with an ordinary thread. The result was that the complainant's eye-sight was permanently damaged to a certain extent. The accused was on these facts convicted of an offence punishable under s. 338 of the Indian Penal Code. He having applied to the High Court:—*Held*, that the accused had acted rashly and negligently so as to endanger human life or the personal safety of others. *Held*, also, that the act of the accused amounted to an offence punishable under s. 337 of the Indian Penal Code, since there was no permanent privation of the sight of either eye in consequence of the operation. Where a Hakim gives out that he is a skilled operator and charges considerable fees, the public are entitled to the ordinary precautions which surgi-

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 337—*concl'd.*

cal knowledge regards as imperative. To neglect such precautions entirely is negligence such as is contemplated by the criminal law. *EMPEROR v. GULAM HYDER PUNJABI* (1915)

I. L. R. 39 Bom. 523

ss. 366, 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution.* A low caste girl left her lawful guardian of her own free will and subsequently met the accused Ewaz Ali and lived with him for some time. Later he made her over to certain persons who, representing that she was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true. *Held*, that Ewaz Ali was neither guilty of an offence under s. 366 of the Indian Penal Code inasmuch as he did not take or entice her away from her legal custody nor of an offence under s. 372 of the said Code. *King-Emperor v. Ram Chander*, 12 All. L. J. 265, *Empress of India v. Sri Lal*, I. L. R. 2 All. 694, followed. *King-Emperor v. Jettha Nathoo*, 6 Bom. L. R. 785, referred to. *EMPEROR v. EWAZ ALI* (1915) . . . I. L. R. 37 All. 624

s. 405—*Criminal Procedure Code (Act V of 1898), ss. 179 and 182—Criminal breach of trust—Hundis sent from Dharapuram—Cashed in Bombay—Jurisdiction.* The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly. It is only the intention which is essential, whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it. Where, therefore, the accused, brokers in Bombay, were charged in the Court of the Sub-Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis, entrusted to them by the complainants, merchants at Dharapuram, for encashment at Bombay. *Held*, that the hundis having been cashed and the proceeds misappropriated by the accused in Bombay the Erode Court had no jurisdiction to try the case. *Ganeshi Lal v. Nand Kishore*, I. L. R. 34 All. 487, approved. *Assistant Sessions Judge of North Arcot v. Ramaswami Asari*, 26 Mad. L. J. 235, distinguished. *Queen-Empress v. O'Brien*, I. L. R. 19 All. 111, and *Emperor v. Mahadeo*, I. L. R. 32 All. 397, commented on. *Held*, also, that, where, as in this case, the complaint clearly charged dishonest misappropriation to accused's own use and not use or disposal in violation of law or contract, the offence fell under the first part of s. 405 of the Indian Penal Code and not under the second. And secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place, not where the contract was made, or should have been performed. *Re RAMBILAS* (1914) I. L. R. 38 Mad. 639

s. 424—*Conviction of a ryot under Madras Estates Land Act (I of 1908), for dishonest*

PENAL CODE (ACT XLV OF 1860)—*concl.*s. 424—*concl.*

concealment and removal of crops, legality of—Madras Estates Land Act (I of 1905), ss. 73 and 212, no bar to conviction. The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the land holder in a certain proportion dishonestly concealed and removed the produce thus preventing the landholder from taking his due share. *Held*, that the provisions of ss. 73 and 212 of the Madras Estates Land Act were no bar to a conviction of a ryot under s. 424, Indian Penal Code, for the dishonest concealment and removal. *Re DIVANFASIDIA THEVAN* (1914) 1 L. R. 38 Mad. 793

s. 436—*Lurking house trespass—Intent—Burden of proof.* The accused was found inside the complainant's house at 2 a.m. and when arrested made no statement as to his reasons

for being there. The judge found the accused in the house at that hour pointed to a guilty intent and it was for him to rebut that presumption. *Emperor v. Ishri*, 1 L. R. 29 Ill. 46, followed. *Emperor v. Jang Singh*, 1 L. R. 6 All. 194, *Sella Muthu Serrayaras and Muttayyan v. Palla Muthu Karuppan*, 21 Mad. L. J. 161, *Queen Empress v. Rayagadayaacki*, 1 L. R. 10 Mad. 240, and *Premamundo Shaha v. Brindaban Chug*, 1 L. R. 22 Cal. 991, referred to. *Emperor v. VILLA* (1915) 1 L. R. 37 All. 395

ss. 478, 480—*Trade mark, meaning of—S. 28—Counterfeiting, what amounts to.* The trade mark alleged to be counterfeited was that of a company who were the manufacturers of a kind of tooth powder sold in boxes. It appeared that apart from two points of difference the imitation of the whole design was most marked and complete. *Held*, that the expression 'trade mark' as defined in s. 478 must not be confined to the trade-mark of the complainants registered in England, but must include the whole design on the top of the box and the black label pasted round the side. That the case clearly came within the definition of "counterfeit" in s. 28, Indian Penal Code. *NILMONER NAG v. DELGA PUDA BANERJEE* (1915) 18 C. W. N. 937

Chaps. XII and XVII—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 348.

1 L. R. 38 Mad. 552

PENALTY.

See INTEREST. 1 L. R. 42 Cal. 652, 630

PENSIONS ACT (XXIII OF 1871).

ss. 4, 5, 6—*Suit for a declaration affecting the liability of Government—Jurisdiction of civil court.* The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the assignee of the Government

PENSIONS ACT (XXIII OF 1871)—*concl.*s. 4—*concl.*

revenue payable in respect of certain property as being the reversioner to one Dajpat Lal, who was the last assignee. He produced a certificate purporting to be a certificate under s. 6 of the Pensions Act, 1871, but it was a certificate granted in respect of some former litigation between the plaintiff and a rival claimant to the property. *Held*, that the suit as framed could not be entertained without the production of a certificate in conformity with s. 6 of Act No. XXIII of 1871; that the certificate produced was not in conformity with s. 6 of the said Act, and that in any case it would be impossible to pass a decree in favour of the plaintiff without affecting the liability of Government to pay such grant within the meaning of the section. *The Secretary of State for India v. Momen*, 1 L. R. 40 Cal. 391, distinguished. *SECRETARY OF STATE FOR INDIA v. JAWAHIR LAL* (1915) 1 L. R. 37 All. 338

s. 6—*Seranyam—Grant of land revenue—Suit to recover—Collector's certificate—Jurisdiction of pleader binding on client—Preliminary decree—*

ability of the suit without the certificate provided for by s. 6 of the Pensions Act. The grant of a pleader admitted a certificate was necessary but after several adjournments for the purpose failed to produce a certificate. A decree was thereupon passed on the preliminary issue dismissing the suit. On appeal by the grantee it was contended that he was not bound by the admission of the pleader and it was stated that such evidence could be produced as would render a certificate unnecessary. *Held*, that the grantee was bound by the admission of his pleader and that even if he was not bound there was no material before the Court to justify a reversal of the decree and therefore a refusal under O. XII, r. 23 of the Civil Procedure Code (Act V of 1908) was impossible. In the absence of evidence to the contrary, the grant of a Seranyam must be presumed to be a grant of land revenue and not of the soil. *Larghinders v. Hind*, 133 1 L. R. 6 Ind. 553, and *Lays Lammashere v. Lays*, 1 L. R. 6 Ind. 553, and *Lays Lammashere v. Lays*, 1 L. R. 6 Ind. 553, referred to. *DATTARAO GHOSAPUR v. NARAYAN* (1914) 1 L. R. 33 Bom. 212

PERFORMANCE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, r. 2.

1 L. R. 38 Mad. 550

PERJURY.

See FRAUD

1 L. R. 38 Mad. 553

Witness—Examination—Suit for a declaration affecting the liability of Government—Jurisdiction of civil court. The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the assignee of the Government

PERJURY—concl'd.

Preliminary inquiry—Omission to record statements of witnesses examined thereat—Order for prosecution not containing assignment of the false statements—Criminal Procedure Code (Act V of 1898), ss. 360 (1), 476—Practice. S. 360 (1) of the Criminal Procedure Code requires the evidence of a witness to be read over to him in the hearing of the accused or his pleader, so as to enable the latter to correct any mistakes in it. The reading of the deposition by the witness himself is not a compliance with the section, and renders the record of it inadmissible in a subsequent trial against him under s. 193 of the Penal Code. *Mahendra Nath Misser v. Emperor*, 12 C. W. N. 815, and *Jyotish Chandra Mukerjee v. Emperor*, I. L. R. 36 Calc. 955, followed. Although s. 476 of the Criminal Procedure Code does not expressly provide for the manner in which the preliminary inquiry thereunder is to be recorded, a summary of the statements of the witnesses examined thereat should be made. An order under the same section, directing the prosecution of a person for giving false evidence, should set out the statements alleged to be false. *EMPEROR v. JOGENDRA NATH GHOSE* (1914) . . . I. L. R. 42 Calc. 240

PERMANENT LEASE.

See HINDU LAW—RELIGIOUS ENDOWMENT
I. L. R. 42 Calc. 536

PERMANENT SETTLEMENT.

See FISHERY . I. L. R. 42 Calc. 489
See MADRAS IRRIGATION CESS ACT (VII of 1865), s. 1 . I. L. R. 38 Mad. 997

PERPETUITIES.

— rule of, applicable to Hindu Law also—

See PRE-EMPTION.
I. L. R. 38 Mad. 114

PERSONAL COVENANT.

See LIMITATION . I. L. R. 42 Calc. 294

PERSONAL DECREE.

See DECREE-HOLDER.
I. L. R. 38 Mad. 677

PETITION.

— for winding up—

See COMPANY . I. L. R. 39 Bom. 16, 47

PIAL.

— over a drain, right to—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

PIECEMEAL TRIAL.

See BAILIFF . I. L. R. 42 Calc. 313

PITRAI CHELA.

See HINDU LAW—SUCCESSION.
I. L. R. 39 Bom. 168

PLAINT.

See COURT-FEE . I. L. R. 42 Calc. 370

— amendment of—

See U. P. COURT OF WARDS ACT (III of 1899), s. 48 . . I. L. R. 37 All. 13

— presentation of—

See MADRAS ESTATES LAND ACT (I of 1908), s. 192 . I. L. R. 38 Mad. 295

PLEADER.

— admission by—

See PENSIONS ACT (XXIII of 1871), s. 6 . . I. L. R. 39 Bom. 352

PLEADINGS.

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

1. ——— Change of case—
Suit on hatchitta—Suit on account stated—Alteration of suit on account stated to suit on account stated in previous year when account stated found to be forgery. The plaintiffs sued to recover the principal and interest due on a certain hatchitta. The plaintiffs alleged that they were the proprietors of a joint bank, that the father of the defendants used to borrow money on hatchittas from their bank, that accounts were adjusted up to 1308 and the father of the defendants signed the hatchitta for 1308 on which the suit was brought. The lower Court found this hatchitta to be a forgery, but gave the plaintiffs a decree on the hatchitta for 1307: *Held*, that the suit being on an account stated and not on an open account and the account stated, sued on, being found to be a forgery, the suit could not be altered to one on an account stated in a previous year. In any case it ought not to have been done with retrospective effect. *BHAIRO PRASAD v. GOJADHAR PRASAD SAHU* (1914) . . . 19 C. W. N. 170

2. ——— Issues not expressly framed, when may and when should not be determined. Where the parties have gone to trial, knowing what the real question between them was, the evidence has been adduced and discussed and the Court has decided the point as if there was an issue framed on it, the decision will not be set aside in appeal simply on the ground that no issue was framed on the point. Where the failure to frame the issue has led to an unfair trial or miscarriage of justice the case will be remanded for retrial. *MOHIUDDIN v. PIRTHI CHAND LAL CHOUDHURY* (1914) . . . 19 C. W. N. 1159

PLEDGE.

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Calc. 455

POLICE OFFICER.

— statement made to—

See CRIMINAL PROCEDURE CODE (ACT V of 1898), s. 162.

I. L. R. 39 Bom. 58

POLICE REPORT

See CRIMINAL PROCEDURE CODE (Act V of 1898) s. 190

I L. R. 38 Mad. 1044

See SURETY I L. R. 42 Calc. 706

POSSESSION

See ACQUESCENCE

I L. R. 37 All. 412

See COURT FEES ACT (VII of 1870) ss. 7 ETC. I L. R. 38 Mad. 1184

See LAND REVENUE CODE (BOX ACT V of 1870) ss. 60 66

I L. R. 39 Bom. 494

See TRANSFER OF PROPERTY ACT (IV of 1882) ss. 4 AND 5

I L. R. 38 Mad. 1158

— by widow—

See HINDU LAW—MAINTENANCE

I L. R. 38 Mad. 153

— length of—

See MUNICIPAL COUNCIL

I L. R. 38 Mad. 8

recovery of—

See TRANSFER OF PROPERTY ACT (IV of 1882) s. 54

I L. R. 39 Bom. 472

— suit for—

See HINDU LAW—GUARDIAN

I L. R. 38 Mad. 1125

See LIMITATION ACT (XV of 1877) SCH. II ART. 91

I L. R. 38 Mad. 321

See LIMITATION ACT (XV of 1877) SCH. I ARTS. 142, 144.

I L. R. 39 Bom. 335

— writ of—

See BAILEY I L. R. 42 Calc. 313

— Tenants in common—

*Resumption—Possession of one co-owner in law the possession of all the co-owners and nothing short of ouster or something equivalent to ouster will put an end to that possession. Where a co-owner in possession did not deny the title of the other co-owners till shortly before the institution of the suit and never laid claim to more than his share, it was presumed that the co-owner in possession was in possession on his own behalf and as well as on behalf of his co-owner. *Cores v. Appakamy* [1911] 4 C. 300. *Jafar Hussain v. Manku* 11 I L. R. 11 All. 19., and *Jafar Nathi v. Baladeo Das* 1 L. R. 35 Cal. 561 referred to. *Anwar Hossain v. Ram Lal* (1914) I L. R. 37 All. 203*

POSSESSORY SUIT

See MAMLATDARS (CIVIL ACT) CODE (BOM. II OF 1860) s. 23.

I L. R. 39 Bom. 352

POST OFFICE.

See POST OFFICE ACT (VI of 1835) ss. 19 61 AND 70

I L. R. 37 All. 259

POST OFFICE ACT (VI OF 1835)

— ss. 19 81, 70—*Offence—Carriage—Transmission of by post, Held that carriage is not a substance which falls within the purview of s. 19 of the Indian Post Office Act 1835, and it is not an offence under that Act to transmit the same by post. *EMPEROR v. ISMAIL KHAN* (1910) I L. R. 37 All. 259*

POWER OF ATTORNEY

See CIVIL PROCEDURE CODE (Act V of 1905) O. XLV ss. 13 16, ETC.

I L. R. 38 Mad. 532

See COMPLAINT I L. R. 42 Calc. 19

— *Construction of—General power of attorney what is it—Civil Procedure Code (Act XIV of 1859) s. 37 (a)—Stamp Act (II of 1859) Sch. I Art. 43—Single transaction, meaning of. A power of attorney which authorizes a person to do all things and take all steps necessary to complete the execution of a decree is a general power of attorney within the meaning of s. 37 (a) of the Civil Procedure Code (Act XIV of 1859). *See* The expression a single transaction, in the Stamp Act (II of 1859) Sch. I Art. 43, applies to a single act or acts so related to each other as to form one judicial transaction. *VENKATARAMANA IYER v. NARAYANASWAMI* (1911) I L. R. 38 Mad. 154*

PRACTICE

See ACQUITTAL I L. R. 42 Calc. 612

See APPEAL I L. R. 42 Calc. 453

See APPEAL—CRIMINAL CASE

I L. R. 42 Calc. 374

See BAILEY I L. R. 42 Calc. 313

See CIVIL PROCEDURE CODE (1859) s. 109 (c)

I L. R. 37 All. 124

See CIVIL PROCEDURE CODE (1859), O. XVII s. 10

I L. R. 39 Bom. 568

See CONTEMPT OF COURT

I L. R. 42 Calc. 1169

See CRIMINAL PROCEDURE CODE, s. 396

I L. R. 37 All. 255

See CRIMINAL PROCEDURE CODE, s. 396

I L. R. 37 All. 110

See CROSS EXAMINATION

I L. R. 42 Calc. 937

See DECREE I L. R. 39 Bom. 83

See EVIDENCE I L. R. 42 Calc. 784

See EXERCISE I L. R. 42 Calc. 109

See HUSBANDRY LAW—MARRIAGE

I L. R. 42 Calc. 231

See MARRIAGE I L. R. 38 Mad. 18

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See ARREST OF SHIP.

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PLEDGE.

See PALAS OR TURNS OF WORSHIP.
I. L. R. 42 Calc. 455.

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———— statement made to—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 162.
I. L. R. 39 Bom. 58.

POLICE REPORT.

See CRIMINAL PROCEDURE CODE (ACT V of 1898), s. 193.

I. L. R. 38 Mad. 1044

See SECRETY . I. L. R. 42 Calc. 708

POSSESSION.

See ACQUISITION.

I. L. R. 37 All. 412

See COURT FEES ACT (VII of 1870). ss. 7, ETC. I. L. R. 38 Mad. 1184

See LAND REVENUE CODE (BOM. ACT V of 1859), ss. 65, 66

I. L. R. 39 Bom. 484

See TRANSFER OF PROPERTY ACT (IV of 1882), ss. 4 AND 54

I. L. R. 38 Mad. 1158

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See HINDU LAW—MAINTENANCE.

I. L. R. 38 Mad. 153

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I. L. R. 38 Mad. 6

recovery of—

See TRANSFER OF PROPERTY ACT (IV of 1882), s. 51 I. L. R. 39 Bom. 472

----- suit for—

See HINDU LAW—GUARDIAN

I. L. R. 38 Mad. 1125

See LIMITATION ACT (XV of 1877), SCH. II, ART. 91 I. L. R. 38 Mad. 321

See LIMITATION ACT (IX of 1908) SCH. I, ARTS. 142, 144

I. L. R. 39 Bom. 335

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POSSESSORY SUIT.

See MAMLATDAR'S COURTS ACT, BOMBAY (BOM. II OF 1906), s. 21.

I. L. R. 39 Bom. 332

POST OFFICE.

See POST OFFICE ACT (VI of 1838), ss. 19, 61 AND 70 . . I. L. R. 37 All. 259

POST OFFICE ACT (VI of 1838).

----- ss. 19, 61, 70—Offence—Concise—Transmission of, by post. Held, that concise is not a substance which falls within the purview of s. 19 of the Indian Post Office Act, 1838, and it is not an offence under that Act to transmit the same by post. *EMPEROR v. ISMAIL KHAN* (1915) I. L. R. 37 All. 259

POWER-OF-ATTORNEY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLV, ss. 15, 16, ETC.

I. L. R. 38 Mad. 832

See COMPLAINT I. L. R. 42 Calc. 19

----- Construction of—General power of attorney, what is a—Civil Procedure Code (Act XIV of 1852), s. 37 (e)—Stamp Act (II of 1859), sch. I, art. 48—Single transaction, meaning of. A power of attorney which authorises a person to do all things and take all steps necessary to complete the execution of a decree is a general power of attorney within the meaning of s. 37 (e) of the Civil Procedure Code (Act XIV of 1852). *See* The expression "a single

VENKATARAMANA IYER v. NARAYANA IYER (1914) I. L. R. 38 Mad. 134

PRACTICE.

See ACQUITTAL . I. L. R. 42 Calc. 612

See APPEAL . I. L. R. 42 Calc. 423

See APPEAL—CRIMINAL CASE.

I. L. R. 42 Calc. 374

See BAILEIFF I. L. R. 42 Calc. 313

See CIVIL PROCEDURE CODE (1908), s. 103 (c) . . I. L. R. 37 All. 124

See CIVIL PROCEDURE CODE (1908), O. XLII, r. 10 . I. L. R. 39 Bom. 568

See CONTEMPT OF COURT.

I. L. R. 42 Calc. 1169

See CRIMINAL PROCEDURE CODE, s. 206. I. L. R. 37 All. 355

See CRIMINAL PROCEDURE CODE, s. 537. I. L. R. 37 All. 110

See CROSS EXAMINATION.

I. L. R. 42 Calc. 957

See DECREE . I. L. R. 39 Bom. 80

See EVIDENCE . I. L. R. 42 Calc. 784

See INSOLVENCY I. L. R. 42 Calc. 109

See MAHOMEDAN LAW—MARRIAGE. I. L. R. 42 Calc. 351

See MORTGAGE . I. L. R. 38 Mad. 18

See PERJURY . I. L. R. 42 Calc. 210

PRACTICE—concl'd.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), ss. 9 AND 38.

I. L. R. 38 Mad. 823

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 15 TO 22, 46, 52.

I. L. R. 38 Mad. 15

See PUBLIC PROSECUTOR, DUTY OF.

I. L. R. 42 Calc. 422

See WRITTEN STATEMENT.

I. L. R. 42 Calc. 957

1. ————— Previous conviction—Relevancy of previous conviction for the purpose of determining extent of sentence—Indian Penal Code (Act XLV of 1860), s. 75—Indian Evidence Act (I of 1872), ss. 51, 165. The proof of a previous conviction not contemplated by s. 75 of the Indian Penal Code may be adduced after the accused is found guilty, as an element to be taken into consideration in awarding punishment. *Per* SHAH, J.—The proof a previous conviction not contemplated by s. 75 of the Indian Penal Code may be adduced provided the previous conviction is relevant under the Indian Evidence Act. The whole question, therefore, is whether the previous conviction in question is relevant under the Act. It is certainly 'relevant' with reference to the question whether the provisions of s. 562 of the Code of Criminal Procedure would apply to this case, and it seems to me to be otherwise relevant on the question of punishment. *EMPEROR v. ISMAIL ALI BHAI* (1914)

I. L. R. 39 Bom. 326

2. ————— Reference—Assessment of damages. A reference should be directed by the Court to assess damages only when the enquiry would involve questions of detail which it would be wasting the time of the Court to investigate. *Wallis v. Sayers*, 6 T. L. R. 356, referred to. *D. N. GHOSE & BROS. v. POPAT NARAIN BROS.* (1915) . I. L. R. 42 Calc. 819

PRE-EMPTION.

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| 1. CONTRACT OF | 363 |
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See BUNDELKHAND ALIENATION ACT (II OF 1903); s. 3 . I. L. R. 37 All. 662

See MAHOMEDAN LAW—PRE-EMPTION.

— right of—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 120. . I. L. R. 38 Mad. 67

1. CONTRACT OF.

————— Promisor, heirs of, not enforceable against—Perpetuities, rule of, applicable to Hindu law also. A contract of pre-emption (with reference to sale of lands), which fixes no

PRE-EMPTION—concl'd.**1. CONTRACT OF—concl'd.**

time within which the agreement to convey is to be performed cannot be enforced against the heirs of the person who entered into the contract as it infringes the rule against perpetuities. The rule of perpetuities is applicable to Hindus also. *Nobin Chandra Soot v. Nabab Ali Sarkar*, 5 C. W. N. 343, followed. *KOLATHU AYYAR v. RANGA VADHYAR* (1912) I. L. R. 38 Mad. 114

2. CUSTOM.

1. ————— Custom—Vendor bound to offer to co-sharers—Refusal to purchase—Refusal to give more than a fixed price. The custom in pursuance of which a right of pre-emption was claimed being that the vendor was bound to offer the property for sale to his co-sharer and only in case of their refusal he could sell to a stranger, the vendor offered the property in dispute to the pre-emptor, who offered only Rs. 160 for it and refused to give more. The vendor thereupon sold it for Rs. 235 to the defendants. *Held*, that the conduct of the plaintiff amounted to a refusal to purchase the property and the vendor was not obliged to give him the option of taking up the contract which he subsequently made for Rs. 235. *Kanhai Lal v. Kalka Prasad*, I. L. R. 27 All. 670, distinguished. *INDRAJ v. BROTHER CLEMENT, MISSIONARY* (1915) I. L. R. 37 All. 262

2. ————— Wajib-ul-arz—Evidence—Custom—Finding of fact—Second appeal. In a suit for pre-emption brought on the basis of custom if the Court considers the proper issue in the case namely whether the custom alleged does or does not exist, and on the evidence comes to the conclusion that it does not exist, the finding is one of fact and is binding on the High Court in second appeal. *BARU MAL v. TANSUKH RAI* (1915) I. L. R. 37 All. 524

3. RIGHT OF PRE-EMPTION.

1. ————— Right of pre-emptor to put vendor to proof of title—Suit must be for entire property sold. *Held*, that a pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to take the title which the vendee was ready to take. Further, that a pre-emptor cannot sue to pre-empt only a portion of the property sold. *SABODRA BIBI v. BAGESHWARI SINGH* (1915) I. L. R. 37 All. 529

2. ————— Right of pre-emption—Effect of perfect partition on right of pre-emption—No fresh wajib-ul-arz prepared at or after partition—Right of a sharer in new mahal after partition to pre-empt property in another new mahal in which he was not a sharer at date of sale—Value of wajib-ul-arz as evidence—Prima facie evidence of custom of pre-emption without proof of instances of custom being enforced. In this appeal, which was one arising out of a suit by the appellant, one

PRE-EMPTION—*contd.*3. RIGHT OF PRE-EMPTION—*contd.*

of the co-sharers in a mauza, for pre-emption after there had been a partition of the mauza in which the land sold was situated, and no fresh wajib ul arz had been prepared after the partition had taken place, their Lordships of the Judicial

Commissioners. The custom of pre-emption which obtained in the unpartitioned mauza survived the partition, so as to give the appellant, a sharer in one of the new mahals, a right to pre-empt property in another of those mahals in which he was not a sharer at the date of the sale. Their Lordships did not dissent from the view expressed by BANERJEE, J. in the full bench case of *Daljan Singh v. Kalka Singh*, 1 L. R. 22 All. 1, that "where a fresh wajib ul arz has not been prepared at partition, it does not follow as a matter of law or principle that the custom of contract in force before partition is no longer to have effect or operation," and were of opinion that the question must depend upon the circumstances of each case and the inferences which may legitimately be drawn from the evidence. A wajib ul arz is by itself good *prima facie* evidence of a custom of pre-emption stated in it without corroboration by evidence of instances in which the custom has been enforced. The evidence as to a custom of pre-emption afforded by a wajib ul arz may of course be rebutted by other evidence. *Dhanwan Singh v. Ahmed Begum Khan* (1914)

1 L. R. 37 All. 129

4. WAJIB-UL-ARZ.

1. ————— *Wajib-ul-arz*—*Incidents of custom not recorded*—*Mahomedan Law*. A suit for pre-emption was brought both under the custom recorded in the wajib-ul arz and Mahomedan Law, but the incidents of the custom were not recorded in the wajib-ul arz. *Held*, that the rights were co-extensive. *Jagann Saha v. Mukhtar Saha*, 1 L. R. 25 All. 60, followed. *Zameer Ahmad v. Abdul Razaq* (1915)

1 L. R. 37 All. 472

2. ————— *Wajib-ul-arz*—*Partition of village—Right of co-sharers in different mahals to pre-empt sales*. A certain village prior to 1873 consisted of one mahal which was subdivided into two parts. The wajib ul arz of that year recorded a custom of pre-emption, first, with near relations, then with co-sharers in the parts and lastly with co-sharers in the village. Subsequently the village was divided into a number of different mahals, and at the last a title deed a new wajib ul arz was drawn up for each of the new mahals in similar terms. The plaintiff, a proprietor in the village, brought a co-sharers

PRE-EMPTION—*contd.*4. WAJIB-UL-ARZ—*contd.*

in the mahal, brought a suit for pre-emption. *Held*, that the plaintiff was no longer a co-sharer with the vendor and therefore had no preferential right as against the vendor, who was proprietor in the village. *Khayali Ram v. Kali Charan* (1915)

1 L. R. 37 All. 373

PRE-EMPTION.

— right of, to put vendor to proof of title—

See PRE-EMPTION 1 L. R. 37 All. 329

PREFERENTIAL HEIR.

See HINDU LAW—SUCCESSION.

1 L. R. 38 Mad. 45

PRELIMINARY DECREE.

See APPEAL 1 L. R. 42 Calc. 914

See CIVIL PROCEDURE CODE (Act V of 1908), ss. 2, 97

1 L. R. 39 Bom. 422

See CIVIL PROCEDURE CODE (Act V of 1908), s. 97 1 L. R. 39 Bom. 339

See PENSIONS ACT (XXIII of 1871), s. 6 1 L. R. 39 Bom. 352

— Finding that a suit is *res judicata*. A decision that a matter is *res judicata* is not a preliminary decree. *Khanmohamed v. Ganjadharpur*, 1 L. R. 39 Bom. 339, followed. *Bharna Lax Dhandra v. Bharna Osava* (1914)

1 L. R. 39 Bom. 421

PRELIMINARY INQUIRY.

See PUNJAB 1 L. R. 42 Calc. 240

PRELIMINARY MORTGAGE-DECREE.

See LIMITATION 1 L. R. 42 Calc. 77d

PRESCRIPTION.

See EASEMENT 1 L. R. 42 Calc. 164

PRESENTATION.

See COMPLAINT 1 L. R. 42 Calc. 19

PRESIDENCY MAGISTRATES.

See PIERCEAL TRIAL

1 L. R. 42 Calc. 313

PRESIDENCY SMALL CAUSE COURT RULES.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV of 1852), ss. 9 and 24

1 L. R. 38 Mad. 423

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1852).

— ss. 9 and 25—*Verbal judgment*. *Verbal judgment of a party is appealable*—*Presidency Small Cause Courts Act, 1852, s. 25, which provides that the Court, power of, to make verbal judgments of parties is preserved*—*Right of a party to appeal, and a suit*

**PRESIDENCY SMALL CAUSE COURTS ACT
(XV OF 1882)—concl'd.**

s. 9—concl'd.

of practice or procedure. The rules of the Presidency Small Cause Court are made by the High Court under the powers conferred by s. 9 of the Presidency Small Cause Courts Act of 1882, as amended by the Act of 1895. That section only empowers the High Court to make rules with reference to matters of practice or procedure and not matters of substantive right. On a true construction of s. 38 of the Act, the power given to the Court is really a right given to a party to apply for a new trial: such right like the right of appeal is not a matter of practice or procedure. O. XLI, r. 2 of the Presidency Small Cause Court Rules which requires at the time of presenting an application for new trial, either the deposit in Court of the decree amount or the giving of security for the due performance of the decree is inconsistent with the statutory right given by s. 38 of the Presidency Small Cause Courts Act and is *ultra vires*. *Attorney-General v. Sillen*, 11 E. R. 1200; s.c. 10 H. L. C. 704, referred to. *Colonial Sugar Refining Company v. Irving*, [1905] A. C. 369, referred to. *MADURAI PILLAI v. MUTHU CHETTY* (1914)

I. L. R. 38 Mad. 823

ss. 43, 48—

See BAILIFF . I. L. R. 42 Calc. 313

s. 69—*Limitation Act* (IX of 1908), s. 20, proviso—*Part-payment of principal—Literate debtor—Part-payment signed, but not written by him, whether sufficient compliance within the proviso.* When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by s. 38 of the Presidency Small Cause Courts Act (XV of 1882), they are sitting "in a suit" within the meaning of those words in s. 69, and if a reference is made to the High Court under its provisions, such reference is valid. S. 20 of the Limitation Act requires that in the case of a part-payment of the principal of a debt, the entry recording the payment should be written by the person who makes the payment, when such person knows how to write; his mere signature to the entry written by another is not a sufficient compliance with the section. *Joshi Bhai Shankar v. Bai Parvati*, I. L. R. 26 Bom. 246, *Jamna v. Jaga Bhana*, I. L. R. 28 Bom. 262, and *Mukhi Haji Rahmattulla v. Coverji Bhujia*, I. L. R. 23 Calc. 546, followed. *Sesha v. Seshaya*, I. L. R. 7 Mad. 55, and *Ellappa v. Annamalai*, I. L. R. 7 Mad. 76, distinguished. *LODD GOVINDOSS KRISHNADOSS v. RUKMANI BAI* (1913)

I. L. R. 38 Mad. 438

**PRESIDENCY TOWNS INSOLVENCY ACT (III
OF 1909).**

s. 36 (4), (5)—

See INSOLVENCY. I. L. R. 42 Calc. 109

s. 90—*Civil Procedure Code* (Act V of 1908), s. 24—*Transfer of petition for insolvency to mufassil District Court for disposal—No jurisdiction. As the jurisdictions conferred by the*

**PRESIDENCY TOWNS INSOLVENCY ACT (III
OF 1909)—concl'd.**

s. 90—concl'd.

Presidency Towns Insolvency Act on the High Court, and by the Provincial Insolvency Act on the mufassal courts are distinct, and the provisions of the two Acts differ in such important respects, it is not competent for the High Court to transfer under s. 90 of the Presidency Towns Insolvency Act and under s. 24, Civil Procedure Code, an Insolvency petition pending before it, under the Presidency Towns Insolvency Act for disposal by a mufassal District Court, under the Provincial Insolvency Act. *SAINTIVASA AYYANGAR v. THE OFFICIAL ASSIGNEE OF MADRAS* (1913)

I. L. R. 38 Mad. 472

PRESS ACT (I OF 1910).

s. 4 (1)—

See FORFEITURE . I. L. R. 42 Calc. 730

PRESUMPTION.

See ACQUIESCENCE.

I. L. R. 37 All. 412

See MADRAS REGULATION XXV OF 1802, s. 4. . I. L. R. 38 Mad. 620

See PENAL CODE (Act XLV OF 1860), ss. 32 AND 83 . I. L. R. 37 All. 187

See POSSESSION . I. L. R. 37 All. 203

PREVIOUS ACQUITTAL.

See CRIMINAL PROCEDURE CODE, s. 403.

I. L. R. 37 All. 107

PREVIOUS CONVICTION.

See PRACTICE . I. L. R. 39 Bom. 326

PRICE.

oral agreement as to—

See EVIDENCE ACT (I OF 1872), s. 92.

I. L. R. 38 Mad. 514

PRIMOGENITURE.

See HINDU LAW—INHERITANCE.

I. L. R. 42 Calc. 1179

PRINCIPAL.

part-payment of—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), s. 69.

I. L. R. 38 Mad. 438

PRINCIPAL AND AGENT.

See SALE OF GOODS.

I. L. R. 42 Calc. 1050

I. ————— *Lease by agent—Apparent authority—Ratification—Knowledge of principal if necessary for ratification.* Every act done by an agent in the course of his employment on behalf of his principal and within the apparent scope of his authority binds the principal, unless agent is in fact unauthorised to do the particular act and the person dealing with him has notice

PRINCIPAL AND AGENT—*conold.*

that in doing so he is exceeding his authority. The grantees in this case were entitled to presume that the agent who had admittedly authority to grant reclamation leases had acted with regularity and within the scope of his authority. Where ratification is established as to a part, it operates as a confirmation of the whole of that particular transaction by the agent. Before the principal can be held bound by ratification he must be proved to have had full knowledge or at any rate means of knowledge of all the essential facts of the transaction into which his agent had entered on his behalf. *KATTAYANI DEBI v. PORT CANNING AND LAND IMPROVEMENT CO.* (1914) 19 C. W. N. 56

2. *Obligation of agent not only to submit accounts but to explain account papers.* The obligation of an agent towards his principal does not terminate merely by submission of account papers. He is bound to explain those papers and if on accounts taken it is found that he has in his hands money which belongs to his principal he is bound to pay that sum. *MADHUSUDAN SEN v. SHAKAL CHANDRA DAS BASAK* (1915) 19 C. W. N. 1070

PRINCIPAL AND SURETY.

See CONTRACT ACT (IX of 1872), ss. 131, 137 . I. L. R. 39 Bom. 52

PRIOR AND PUISNE MORTGAGES.

See MORTGAGE . I. L. R. 38 Mad. 18

PRIOR MORTGAGEE.

See MORTGAGE . I. L. R. 38 Mad. 18

PRIORITY.

See CO-OPERATIVE SOCIETY . I. L. R. 42 Calc. 377

PRIVATE AWARD.

See ARBITRATION . 19 C. W. N. 943

PRIVITY OF CONTRACT.

See CONTRACT . I. L. R. 37 All. 115

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See PRIVY COUNCIL, PRACTICE OF

See CIVIL PROCEDURE CODE (1908), O. XLV, r. 15 . I. L. R. 37 All. 567

decision of—

See BILL OF LADING . I. L. R. 35 Mad. 941

order of, transmitted to the original Court.

See CIVIL PROCEDURE CODE (Act V of 1908), O. XLV, ss. 15 and 16 . I. L. R. 38 Mad. 522

PRIVY COUNCIL, APPEAL TO.

See APPEAL TO PRIVY COUNCIL.

PRIVY COUNCIL, PRACTICE OF.

Special leave to appeal in Criminal case, application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition, refusal of—Tendering advice as to exercise of King's Privilege of Pardon. On an application for special leave to appeal in a case in which the petitioners had been sentenced to death, their Lordships of the Judicial Committee, not being a Court of Criminal Appeal, declined to interfere with regard to staying execution of the sentences pending the hearing, or to express any opinion as to whether they ought to be suspended. The tendering of advice to His Majesty as to the exercise of this Privilege of pardon is a matter for the Executive Government, and is outside their Lordships' province. *BALMUKUND v. KING EMPRESS* (1915) 1. L. R. 42 Calc. 759

PRIZE.

See CONFISCATION . I. L. R. 42 Calc. 334

PROBATE.

See GUARDIAN . I. L. R. 42 Calc. 953
as evidence of right—

See SUCCESSION ACT (X of 1865), s. 107 . I. L. R. 38 Mad. 955

conditional order for grant of—
See SUCCESSION ACT (X of 1865), s. 107 . I. L. R. 35 Mad. 953

1. *Joint Hindu family—Ancestral property—Will—Payment of full probate duty.* In a case where there was admittedly a joint Hindu family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised, and therefore they were exempted from the payment of any probate duty. *Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Cutcher v. Ahera v. Chinnai*, 1. L. R. 27 Ind. 161, distinguished. *KARNATAK PARANAHAM v. GUTRAYASAL* (1914) . I. L. R. 39 Bom. 245

2. *Remission of probate duty—Prize is common form—Remission of probate duty—Prize and Administration Act (V of 1911), s. 50.* It does not matter by what facts knowledge of the grant of probate and acquiescence in it are established, for neither knowledge, nor acquiescence, nor any of the facts of themselves operative as a bar to the remission with every person interested in the estate of the testator has a right to demand he was not made a party to the probate proceedings. *He*

PROBATE—concl'd.

application must be *bona fide* and he must give some reasonable and true explanation of the delay. *Hoffman v. Norris*, 2 Phillim. 230, *Merryweather v. Turner*, 3 Curt. 802, and *Kunja Lal Chowdhury v. Kailash Chandra Chowdhury*, 14 C. W. N. 1068, referred to. *MANORAMA CHOWDHURANI v. SHIVA SUNDARI MOZUMDAR* (1914)

I. L. R. 42 Calc. 480

3. ———— *Probate or letters of administration, revocation of—Effect on alienation under revoked grant—Void or voidable grant—Mortgage to pay off debt due by estate, if subsists after revocation.* A purchaser of property sold under a grant of probate or letters of administration, subsequently revoked, in order to discharge a debt which the true executor or administrator was compellable to pay acquires an indefeasible title. There has been a divergence of judicial opinion on the question of the effect of revocation of a probate or letters of administration, the effect being made to depend upon whether the grant was void or voidable. A view more favourable to the rights of a *bona fide* transferee for value without notice has been taken in recent decisions where grants have been treated as operative until revoked even when obtained by fraud and by suppression of the fact that the deceased had left a will. *Debendra Nath Dutt v. Administrator-General of Bengal*, L. R. 35 I. A. 109: s. c. I. L. R. 35 Calc. 555; 12 C. W. N. 802, referred to. Where a co-proprietor of the executor having satisfied the entire Government revenue obtained a decree for contribution against him, and in execution thereof a property belonging to the estate was sold at an inadequate price, and meanwhile the probate having been revoked, administrators appointed in his place with the Court's sanction mortgaged the property to procure money which they applied in setting aside the sale under s. 310A of the Civil Procedure Code of 1882, and subsequently on appeal by the executor, the latter was restored to office and the letters of administration were cancelled: *Held*, that the mortgage held good. *SAILAJA PRASAD CHATTERJEE v. JADU NATH BOSE* (1914) 19 C. W. N. 240

PROBATE AND ADMINISTRATION ACT (V OF 1865).

See HINDU LAW—WILL.

I. L. R. 38 Mad. 369

s. 34—*Wrongful alienation of deceased's estate, apprehended by caveator—Temporary injunction, application for, if lies—Civil Procedure Code (Act V of 1908), O. XXXIX, rr. 1, 7—Administrator pendente lite, appointment of, proper course—Injunction when may be granted—English practice.* A probate proceeding is not a suit in which there is property in dispute as contemplated by r. 1 of O. XXXIX of the Civil Procedure Code, as the only question in controversy in such a proceeding is that of representation of the estate of the deceased and no question of title thereto, i.e., the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investi-

PROBATE AND ADMINISTRATION ACT (V OF 1865)—cont'd.

s. 34—concl'd.

gated by the court. But the Court of probate is not therefore incompetent to grant a temporary injunction in any circumstances. The proper procedure to follow in cases of this description is for the aggrieved party to apply to the Court for the appointment of an administrator *pendente lite*. When such an application has been made, the Court may, in case of necessity, grant a temporary injunction either in exercise of its inherent power or under r. 7 of O. XXXIX of the Civil Procedure Code. English practice referred to and contrasted. *NIROD BARANI DEBI v. CHAMATKARINI DEBI* (1914) 19 C. W. N. 205

s. 50—

See PROBATE. I. L. R. 42 Calc. 480

1. ———— *Civil Procedure Code (1908), ss. 114 and 151—Letters of Administration—Cancellation of order—Procedure.* A Court which has once granted letters of administration cannot revoke them without notice to the person in whose favour they have been granted. Where letters of administration have been granted *ex parte* and an application is made to revoke them, it is open to the court concerned to proceed either under s. 114 or s. 151 of the Code of Civil Procedure or under s. 50 of the Probate and Administration Act (1881) *PARMAN v. BOHRA NEK RAM* (1915) I. L. R. 37 All. 380

2. ———— *Revocation, application for—Question of genuineness of will if arises—Just cause—Fraudulent concealment from Court by person cited of transfer of his interests—Assignee not cited in consequence—Assignee if may apply for revocation, when assignment subsequent to testator's death.* No question of the genuineness of the will arises for consideration till the Court has decided that the probate must be revoked on one or more of the grounds specified in s. 50 of the Probate and Administration Act. The only matter for consideration upon an application for revocation of probate is whether the applicants have made out a just cause for revocation. The application could not be thrown out at this stage on the ground that the evidence adduced by the applicant was not sufficient to throw doubt upon the genuineness of the will. A person interested by assignment in the estate of the deceased may, where a will has been set up and proved at variance with his interests, apply for revocation of the probate of the will so set up. He need not show that he had an interest in the estate of the deceased at the time of his death. An interest acquired subsequently by purchase of a part of the estate is sufficient. Where A having applied for probate of a will, caused citation to be issued on B his father who but for the will would inherit a portion of the estate, but the notice was served on B a week after B had assigned his interests to C, but neither B nor A, who presumably knew of the transfer by B, brought the fact of the assignment to the Court's notice, and probate was granted without the as-

PROBATE AND ADMINISTRATION ACT (V OF 1885)—*contd*

s. 50—*contd*

as when getting any notice of the proceedings, held, that the proceeding is not defective in substance was bad because the grant was obtained

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1108

s. 50, 62, 63—Hindu reversioner of sole specially cited in probate proceeding—When Court issued by wrong information refrained from issuing special citation, proceeding defective in substance—Person not party, when bound—Full knowledge of proceeding and capacity to interfere to be proved—Onus of proof. Although a reversioner under the Hindu Law has no present alienable interest in the property left by the deceased, he is substantially interested in the protection or devolution of the estate and as such is entitled to appear and be heard in a probate proceeding. Although omission in an application under s. 62 of the Probate and Administration Act to set out the names and residences of the family or other relatives of the deceased may not affect the validity of the proceeding where the applicant makes an incorrect statement on these points and the Court being misled thereby does not direct the issue of special citation in the exercise of its discretion under s. 63 the proceeding to obtain probate is defective in substance within the meaning of the first clause of the explanation to s. 50 of the Act. The rule that a person is bound by probate proceedings to which he is no party and of which he has received no notice from Court depends upon proof of his full knowledge of the proceeding and his capacity to make himself a party, and the burden of proof is on the person who alleges it. It is not necessary for the party who applies for revocation to prove not only that no special citation was served on him but also that he had no knowledge of the proceeding. *Premchand Das v. Surendra Nath Datta*, 20 C. W. N. 1061 (1901) 10 C. W. N. 822

s. 50—Sanctions of Court obtained in respect of property but not of interest—Steps were taken to effect of finding—But then interest was of the Probate and Administration Act which authorizes an administrator to grant a mortgage of immovable property vested in him only with the previous permission of the Probate Court and thus that sanction of the Court should be taken of all the essential contents of the mortgage deed. As to whether the person for payment of interest. Where the principal amount only was due to and in the application for sanction, but in the mortgage deed a sum exceeding the principal was stated to be due, the Court should not be bound to pay more than the principal. *Central Bank Ltd. v. Bank of India Ltd.*, 1911 C. W. N. 1061 (1901) 10 C. W. N. 822

PROBATE AND ADMINISTRATION ACT (V OF 1885)—*contd*

s. 50—*contd*

J. L. I. 27 AL. 511. *BARAJA PRASAD (CHATTERJEE) v. JADU NATH BHOW* (1911) 10 C. W. N. 10

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I. L. R. 37 All. 10

See CRIMINAL PROCEDURE CODE, s. 14
AND 37 I. L. R. 37 All. 53

See CRIMINAL PROCEDURE CODE, s. 14
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s. 19 AND 20 I. L. R. 37 All. 63

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See PROBATE AND ADMINISTRATION ACT
(V OF 1885) s. 50
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See PROVINCIAL LAND REVENUE ACT (1901)
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See CIVIL PROCEDURE CODE (1908) s. 17
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— *See* DEBT OF

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I. L. R. 33 Mad. 113

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s. 19 AND 20 I. L. R. 37 All. 63

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CONTRACTS ACT (1901) s. 19
AND 20 I. L. R. 37 All. 63

PROMISSORY NOTE—concl'd.

S. 92 of the Indian Evidence Act precludes an executant from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note. *Per* SPENCER, J.—S. 127 of the Indian Contract Act shows that the value received by the principal debtor is a sufficient consideration to bind the surety and s. 128 makes his liability co-extensive. SORNALINGA MUDALI v. PACHAI NAICKAN (1913)

I. L. R. 38 Mad. 680

2. ———— *Suit by assignee of promissory note against executants—Payment of consideration by assignee, irrelevant. Held, that in a suit by the assignee of a promissory note against the executants the latter are not concerned with the question whether the assignment was for consideration or not. All that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge.* BALDEO SAHAI v. BEHARI LAL (1914)

I. L. R. 37 All. 99

PROOF IN COMMON FORM.

See PROBATE . I. L. R. 42 Calc. 480

PROPERTY.

——— vesting of—

See EVIDENCE ACT (I OF 1872), s. 92, PROVS. 1 AND 3.

I. L. R. 38 Mad. 226

PROPRIETARY TITLE.

See AGRA TENANCY ACT (II OF 1901), s. 199 . I. L. R. 37 All. 95

PROSECUTION.

See EVIDENCE . I. L. R. 42 Calc. 784

——— duty of—

See CHARGE . I. L. R. 42 Calc. 957

——— duty of, to call all witnesses—

See PENAL CODE, s. 114. 19 C. W. N. 28

PROSTITUTION.

See HINDU LAW—INHERITANCE.

I. L. R. 38 Mad. 1144

PROTECTION.

——— doctrine of—

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 745

PROVIDENT INSURANCE.

——— *Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—Provident Insurance Societies Act (V of 1912) ss. 2 (8), 6, 7, 21. A company having a share capital divided into shares must, if it intends to carry on the business of a provident insurance society, be registered under the Provident Insurance Societies Act (V of 1912) before it receives any premium or contribution.*

PROVIDENT INSURANCE—concl'd.

Oriental Government Security Life Assurance Co. v. Oriental Assurance Co., I. L. R. 40 Calc. 570, explained. DEPUTY LEGAL REMEMBRANCER v. SITAL CHANDRA PAL (1914)

I. L. R. 42 Calc. 300

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912).

——— ss. 2 (8), 6, 7, 21—

See PROVIDENT INSURANCE.

I. L. R. 42 Calc. 300

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——— ss. 4 cls. (b), (g), 16—

See MINOR . I. L. R. 42 Calc. 225

——— ss. 13, 16, 34—

See INSOLVENCY . I. L. R. 42 Calc. 289

——— ss. 15, 16, 18, 20, 22, 46 and 52—

——— *Official Receiver's order dismissing insolvency petition—No appeal direct to High Court—Practice—No interference in revision where other remedy open. No appeal lies under s. 46, cl. (2), of the Provincial Insolvency Act to the High Court from the order of an Official Receiver dismissing an insolvency petition; but an appeal against orders passed by the Official Receiver lies, under s. 22, only to the District Court. The language of s. 22 read with s. 52, cl. (2), shows that such right of appeal is not confined to orders made under ss. 18, 19, and 20, but extends to all orders of the Receiver. Obiter: An Official Receiver invested with the powers mentioned in cl. (a) of s. 52 (1) has the power to dismiss an insolvency petition under s. 15. The Court will not interfere under s. 115, Civil Procedure Code, in a case where other adequate remedy was open. CHIDAMABARAM v. NAGAPPA (1912) . I. L. R. 38 Mad. 15*

——— s. 16, cl. (3)—

See RAILWAY RECEIPT.

I. L. R. 38 Mad. 664

——— ss. 18, 36, 47—*Power of Court to dispossess third persons of property belonging to an insolvent—Inquiry as to ownership of property alleged to belong to the insolvent—Procedure. A Court exercising jurisdiction under the Provincial Insolvency Act, 1907, has power to inquire whether property in the possession of a third party and alleged by the receiver to be property of the insolvent is really so or not, and if it finds that such property is the property of the insolvent, to order its delivery to the receiver. But in making such an inquiry the Court should follow the procedure of a Civil Court in a civil suit; should require the receiver and the party in possession to state their respective cases in writing; should fix issues, and should give the parties an opportunity of producing evidence. BANSIDHAR v. KHARAGIT (1914)*

I. L. R. 37 All. 65

——— s. 31—*"Secured creditor"—Insolvency—Agreement appointing creditor agent for sale*

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s. 31—*concl'd.*

of debtor's goods—*Proceeds to be paid to creditor.* The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank, the substance of which was that all books then in stock and all books to be published thereafter were to be made over at once to the bank; that a commission at a certain rate was to be allowed to the bank on the sale of the books, and that the sale-proceeds of the books were to be credited to the debtors' loan account every month after deducting the commis-

I. L. R. 37 All. 383

s. 34—

1. *Attachment before judgment—Plaintiff obtaining decree if acquires lien on money deposited to have attachment with drawn—Defendant adjudicated insolvent before money could be realised in execution of decree—Successor in insolvency if may claim money deposited.* Where defendant's properties were attached before judgment in plaintiff's suit, but the Court directed the attached properties to be released from attachment on the defendant's paying Rs. 500 as cash security; and after the same was paid and the properties released, the defendant was adjudged an insolvent under Act III of 1907, but not before the plaintiff's suit was decreed. *Held*, that the plaintiff acquired no lien or charge upon the money deposited as security for getting the attachment before judgment withdrawn, and the Receiver in insolvency was entitled to have the money paid to him. The money not having been realised in execution of a decree prior to the adjudication order, s. 31 of Act III of 1907 did not apply. *THAKUR NATH CHAKRAVARTI v. MOUNT MORAR DES* (1913) 19 C. W. N. 1200

2. *Decree for sale of certain property was obtained by one of the creditors—Prior to sale judgment-debtor was adjudged insolvent—Notice of other creditors.* s. 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realised in an execution sale. Certain property was attached before judgment and a decree was subsequently obtained for its sale; but prior to a sale actually taking place the judgment-debtor was adjudged an insolvent. *Held*, that as the order of adjudication was passed prior to the sale of the property it must be regarded as the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s. 34—*concl'd.*

property of the judgment-debtor and as such was available to the general body of creditors. *HAYSH NATH v. KANHAIA LAL DHARMA* (1915)

I. L. R. 37 All. 432

s. 38—*Insolvency—Right of one creditor to challenge claim of another—Right of court to enquire—Jurisdiction.* *Held*, that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and, if he does so, the Judge is bound to inquire into the truth of his allegations in the insolvency, and cannot merely refer the applicant to be remedied by an L. *KUMARHARI RAM v. BHOLAR MAL* (1915)

I. L. R. 37 All. 232

s. 37—*Subsections (1), (2)—Fraudulent preference, how determined—Debtor's intention and motive material—Preference due entirely to pressure from creditor, if fraudulent—Credit v. if may proceed good faith—Onus.* Under s. 37 of the Provincial Insolvency Act, good faith on the part of the creditor affords him no protection where the intention of the debtor to give him preference is established, although sub-s. (2) of the section protects a person who in good faith and for valuable consideration has acquired title through or under a creditor of the insolvent. "Preference" implies an act of free will, and there can be no "preference" where the act is the result of pressure brought to bear on the debtor by the creditor, though there would be fraudulent preference where, notwithstanding that the payment or disposition might never have been made but for the importunity of the creditor, it is also a fact that the payment never would have been made but for the desire to prefer. The presumption of fraudulent intention may be rebutted if it is apparent that the debtor acted in fulfilment of a prior agreement, but it will not suffice to prove that the debtor was moved by a mere sense of honour or a sense of duty or of moral obligation, that he acted from motives of kindness or gratitude. The intention of the debtor is the paramount consideration and if the transaction can be properly referred to some other motive than that of giving the particular creditor a preference over the others, the payment is not fraudulent. In the determination of the question whether a person is able or unable to pay his debts as they become due from his own money, the fact that he has money locked up which at a later period may be available for the payment of his debts is immaterial. Where an act is imputed as a fraudulent preference, the onus of proof lies on the creditor, even if the debtor was insolvent at the time of the payment and knew himself to be so, though in such a case the onus may shift. *MAHESWAR NATH v. BHOLAR MAL* (1915) 19 C. W. N. 137

s. 42—*Judgment's report—Inquiry as to bona fides of creditor.* Upon report by a receiver of an insolvent's property to the effect that the judgment had fraudulently transferred certain property of his just before he was declared an insolvent

PROMISSORY NOTE—concl'd.

S. 92 of the Indian Evidence Act precludes an executant from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note. *Per* SPENCER, J.—S. 127 of the Indian Contract Act shows that the value received by the principal debtor is a sufficient consideration to bind the surety and s. 128 makes his liability co-extensive. *SORNALINGA MUDALI v. PACHAI NAICKAN* (1913)

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——— vesting of—

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I. L. R. 38 Mad. 226

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PROVIDENT INSURANCE.

——— *Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—Provident Insurance Societies Act (V of 1912) ss. 2 (8), 6, 7, 21. A company having a share capital divided into shares must, if it intends to carry on the business of a provident insurance society, be registered under the Provident Insurance Societies Act (V of 1912) before it receives any premium or contribution.*

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——— s. 31—*"Secured creditor"—Insolvency—Agreement appointing creditor agent for sale*

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—*contd*s. 31—*concl*

of debtor's goods—Proceeds to be paid to creditor. The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank, the substance of which was that all books then in stock and all books to be published thereafter were to be made over at once to the bank; that a commission at a certain rate was to be allowed to the bank on the sale of the books, and that the sale proceeds of the books were to be credited to the debtors' loan

I. L. R. 37 All. 393

s. 34—

1. Attachment before judgment—Plaintiff obtaining decree if acquires lien on money deposited to have attachment with drawn—Defendant adjudicated insolvent before money could be realized in execution of decree—Receiver in insolvency if may claim money deposited. Where defendant's properties were attached before judgment in plaintiff's suit, but the Court directed the attached properties to be released from attachment on the defendant's paying Rs. 500 as cash security; and after the same was paid and the properties released, the defendant was adjudged an insolvent under Act III of 1907, but not before the plaintiff's suit was decreed. *Held*, that the plaintiff acquired no lien or charge upon the money deposited as security for getting the attachment before judgment withdrawn, and the Receiver in insolvency was entitled to have the money paid to him. The money not having been realized in execution of a decree prior to the adjudication under s. 34 of Act III of 1907 did not apply. *PROBODHA NATH CHAKRAVARTI v. MOHINI MONAY SEN* (1915) 19 C. W. N. 1200

2. Decree for sale of certain property was obtained by one of the creditors—Prior to sale judgment-debtor was adjudged insolvent—Lien of other creditors. s. 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realized on an execution sale. Certain property was attached before judgment and a decree was subsequently obtained for its sale, but prior to a sale actually taking place the judgment-debtor was adjudged an insolvent. *Held*, that as the order of adjudication was passed prior to the sale of the property it must be regarded as the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—*contd*s. 34—*concl*

property of the judgment-debtor and as such was available to the general body of creditors. *KASUT NATH v. KANHAIYA LAL BHARMA* (1915)

I. L. R. 37 All. 432

s. 38—Insolvency—Right of one creditor to challenge claim of another—Duty of Court to inquire—Sanction. *Held*, that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and, if he does so, the Judge is bound to inquire into the truth of his allegations in the insolvency, and cannot merely refer the applicant to his remedy by suit. *KIRTIHALL RAM v. BHOLAN MAL* (1915)

I. L. R. 37 All. 232

s. 37—Subsection (1), (2)—Fraudulent preference, how determined—Debtor's intention and motive material—Preference due entirely to pressure from creditor, if fraudulent—Creditor, if may plead good faith—Quere. Under s. 37 of the Provincial Insolvency Act, good faith on the part of the creditor affords him no protection where the intention of the debtor to give him preference is established, although sub-s. (2) of the section protects a person who in good faith and for valuable consideration has acquired title through or under a creditor of the insolvent. "Preference" implies an act of free will, and there can be no "preference" where the act is the result of pressure brought to bear on the debtor by the creditor, though there would be fraudulent preference where, notwithstanding that the payment or disposition might never have been made but for the importunity of the creditor, it is also a fact that the payment never would have been made but for the desire to prefer. The presumption of fraudulent intention may be repelled, if it

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s. 43—Receiver's report—Insolvency to have a certificate. On report by a receiver of an insolvent's property to the effect that the insolvent had fraudulently transferred certain property of his just before he was declared an insol-

PROVINCIAL INSOLVENCY ACT (III OF 1907) *—concl'd.*

s. 43—concl'd.

vent, and that he had concealed the fact that he was the owner of a certain shop, the Court convicted him under s. 43 of the Provincial Insolvency Act. *Held*, that a receiver's reports do not constitute legal evidence upon which an order under s. 43 of the said Act can be based, and therefore a conviction under s. 43 based only on a receiver's report is bad in law. *Emperor v. Chiranjil Lal*, I. L. R. 36 All. 576, *Nathu Mal v. The District Judge of Benares*, I. L. R. 32 All. 547, *Ex-parte Campbell In re, Wallace*, 15 Q. B. D. 213, referred to. *NAND KISHORE v. SURAJ MAL* (1915)

I. L. R. 37 All. 429

s. 46—Leave to appeal refused by District Judge—Concurrent jurisdiction of High Court to grant leave—Order to District Judge, if to be set aside before grant of leave—Practice—Civil Procedure Code (Act V of 1908), O. XLI, r. 11, hearing under, if necessary, after leave granted. The High Court having concurrent jurisdiction, with the District Judge, to grant leave to appeal from an order under the Insolvency Act, can do so, when such leave has been refused by the District Judge. Where such leave is granted, there is no necessity for a further hearing under O. XLI, r. 11, of the Civil Procedure Code. *MADHU SUDAN PAL v. PARBATI SUNDARI DASIA* (1914)

19 C. W. N. 760

s. 66—Mortgage, if made in good faith—Onus. Under s. 36 of the Provincial Insolvency Act, the onus of proving that a mortgage executed by an insolvent within two years before his adjudication as such was made in good faith and is therefore binding on the Receiver is on the mortgagee. *NILMONI CHAUDHURI v. BASANTA KUMAR BANERJI* (1914)

19 C. W. N. 865

PROVINCIAL SMALL CAUSE COURTS ACT **(IX OF 1887).**

ss. 27, 32, 33 and 35—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 24 . I. L. R. 38 Mad. 25

s. 35—Jurisdiction—Munsif vested with the powers of a Judge of the Court of Small Causes succeeded by one not vested with such powers—Appeal. When a Munsif vested with the powers of a Court of small causes is succeeded in office by a Munsif not vested with such powers, the latter under s. 35 of the Provincial Small Cause Courts Act, bound to try the suits pending on the file as regular suits and an appeal lies against his decision. *Shiam Behari Lal v. Kali*, 12 All. J. R. 109, followed. *Mangal Sen v. Rup Chand*, I. L. R. 13 All. 324, dissented from. *Kamta Prosad v. Mahabul Singh*, 6 O. C. 81, *Dulal Chandra Deb v. Ram Narain Deb*, I. L. R. 31 Calc. 1057, *Ram Chandra v. Ganesh*, I. L. R. 23 Bom. 382, referred to. *SARJU PRASAD v. MAHADEO PANDE* (1915)

I. L. R. 37 All. 450

PROVINCIAL SMALL CAUSE COURTS ACT **(IX OF 1887)—cont'd.**

Sch. II, Art. 8—

See HOMESTEAD LAND.

I. L. R. 42 Calc. 638

1. **Grant of forest rights—Suit for rent by grantor, if may be entertained by Small Cause Court—"Rent," what is—Bengal Tenancy Act (VIII of 1885), ss. 144, 193.** A grant under which the grantee becomes entitled to cut and remove during a specified period trees which might during that period attain a prescribed size (whether it creates an interest in land or not) is a grant of forest rights within the meaning of s. 193 of the Bengal Tenancy Act. The transaction cannot be regarded as a sale of timber, and the consideration payable for such rights is rent within the meaning of the term as used in cl. (8) of Sch. II of the Provincial Small Cause Courts Act. Such a suit cannot be entertained by a Small Cause Court, and should be instituted under s. 144 of the Bengal Tenancy Act in the Court which would have jurisdiction to entertain a suit for the possession of the trees. *BANDE ALI FAKIR v. AMUD SARKAR* (1914)

19 C. W. N. 425

2. **Special authority to try rent suits under Small Cause Court procedure, if may be conferred generally on the Court.** Cl. 8 of Sch. II of the Provincial Small Cause Courts Act requires that the Judge personally should have been invested with authority to exercise jurisdiction and not that jurisdiction should be conferred upon the Court. A notification of the Local Government vesting all Munsifs of certain places with power to try, under the Small Cause Court procedure, suits for recovery of rent of homestead lands within their respective jurisdictions when the value did not exceed Rs. 50 was insufficient to confer on the officers concerned the power referred to in cl. 8 of Sch. II of the Provincial Small Cause Courts Act. *SAFER ALI MONDAL v. GOLAM MONDAL* (1915)

19 C. W. N. 1236

Sch. II, Art. 13—Revenue Jurisdiction Act (Bom. X of 1876), s. 5, cl. (c)—Civil Procedure Code (Act V of 1908), O. VIII, r. 6—Suit by an Inamdar against a Khatedar for recovery of sums—Dues—Suit not cognizable by a Small Cause Court—Set-off claimed in a capacity different from that in suit, not allowable. Sums payable by a Khatedar to an Inamdar as superior holder are dues and a suit to recover such dues, though less than Rs. 500, is not cognizable by a Court of Small Causes and a decree passed in such suit is subject to a second appeal. In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immoveable property payable by the Khatedar, the defendant, as a *pujari* (worshipper), claimed to set off the stipend payable to him by the plaintiff. *Held*, that the defendant could not claim the set-off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff. *MADHAVRAO MORESHVAR v. RAMA KALU* (1914)

I. L. R. 39 Bom. 131

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895)—concl'd.**s. 9—concl'd.**

also proceedings taken upon a certificate should not be treated as void merely because the requisition under s. 9 (2) of the Public Demands Recovery Act was not duly signed and verified. But there can be no valid sale on a certificate which did not specify the amount due, and otherwise did not comply with the forms laid down by the Act and which the officer issuing the certificate appeared to have signed mechanically. The obvious intention of s. 9 (3) of the Public Demands Recovery Act is that the officer shall use his discretion as to the issue of a certificate, determine whether the case is a proper one for it, whether the money be due or not. *Bajjnath v. Ramgat*, L. R. 23 I. A. 45 : s. c. I. L. R. 23 Calc. 775, and *Bajjnath v. Ramgat*, 5 C. L. J. 687, followed. The mere entry in the order-sheet of the certificate case that notice had been served is no proof that service was effected. When the circumstances of the case show that the proceedings have been carried on in a careless or slovenly manner, the Court will be slow to apply the maxim *omnia præsumentur rite et solenniter esse acta donec probetur in contrarium*. *MOHIDDIN v. PIRTHICHAND LAL CHOWDHURY* (1914) 19 C. W. N. 1159

PUBLIC NUISANCE.

1. **Encroachment on public pathway—Application to District Magistrate by letter—Reference of applicant by letter to Civil Court—Subsequent petition to the Subdivisional Magistrate regarding the same pathway—Issue of conditional order—Appearance of opposite party and claim of title to the path—Dropping proceedings without taking evidence—Criminal Procedure Code (Act V of 1898), ss. 133, 137.** When a Magistrate makes a conditional order under s. 133 of the Criminal Procedure Code against a party who appears and shows cause, he is bound, under s. 137, to take evidence as in a summons case. It is open to him thereafter to consider whether there is a complete answer to the case, or whether it is not a proper one for reference to the Civil Court. *SAROJBASHINI DEBI v. SRIPATI CHARAN CHOWDHURY* (1914) I. L. R. 42 Calc. 702

2. **Unlawful obstruction to public way—Bonâ fide question of title—Duty of Magistrate to determine the question—Criminal Procedure Code (Act V of 1898), ss. 133, 137.** Per *SHARFUDDIN, J.*—When a party, against whom an order under s. 133 of the Criminal Procedure Code is contemplated, appears and raises the question that a pathway, alleged to have been unlawfully obstructed, is not a public but a private one, the Magistrate should not only decide whether it is public or private, but he should determine whether the claim is *bonâ fide* or a mere pretence set up only to oust the jurisdiction of the Court. If he finds that the claim is a mere pretence, he may proceed to pass a final order; but if he finds that the claim, though not substantiated, has been raised *bonâ fide*, he should stay

PUBLIC NUISANCE—concl'd.

his hand and refer the party to the Civil Court, and if the party does not have recourse to such Court within a reasonable time, the Magistrate may then proceed to make the order absolute. *Belat Ali v. Abdur Rahim*, 8 C. W. N. 143, *Malukdhari Tewari v. Hari Madhab Das*, 9 C. W. N. 72, *Luckhee Narain Banerjee v. Ram Kumar Mukherjee*, I. L. R. 15 Calc. 564, and *Preonath Dey v. Gobordhone Malo*, I. L. R. 25 Calc. 278, referred to. The provisions of s. 133 of the Code should be sparingly used. *TEUNON, J.*, in the circumstances of the case, assented to the order proposed. *MANIPUR DEY v. BIDHU BHUSHAN SARKAR* (1914) I. L. R. 42 Calc. 158

PUBLIC PATHWAY.**encroachment on—**

See PUBLIC NUISANCE.

I. L. R. 42 Calc. 702

obstruction to—

See PUBLIC NUISANCE.

I. L. R. 42 Calc. 158

PUBLIC POLICY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.

I. L. R. 38 Mad. 850

See SLAVERY BOND.

I. L. R. 42 Calc. 742

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . I. L. R. 37 All. 631

contravention of—

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Calc. 455

PUBLIC PROSECUTOR.

See PENAL CODE, s. 114.

19 C. W. N. 28

PUBLIC PROSECUTOR, DUTY OF.

Duty to produce all the evidence in his power bearing directly on the charge—Duty to call all the available eye-witnesses in capital cases—Omission to examine material witnesses, effect of—Inference adverse to the prosecution arising therefrom—Practice. The purpose of a criminal trial is not to support at all costs a theory, but to investigate the offence and to determine the guilt or innocence of the accused; and the duty of a Public Prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. It is not his duty to call only witnesses who speak in his favour. *Empress v. Dhunno Kazi*, I. L. R. 8 Calc. 121, discussed and explained. He should, in a capital case, place before the Court the testimony of all the available eye-witnesses though brought to the Court by the defence, and though they give different accounts. The rule is not a technical one, but founded on commonsense and humanity. *Reg. v. Holden*, 8 C. & P. 609, followed. Where witnesses (who from their connec-

PUTNI—concl'd.

if there is conflicting evidence on both sides presume that possession was with the party whose title has been established but it does not follow that when the plaintiff has to establish possession at a particular point of time he is entitled to call upon the Court to presume that because his title has been established possession must be presumed to have been with the holder of the title at the specified period of time. This contention is clearly opposed to the decision of the Judicial Committee in *Mohima Chandra v. Mohesh Chandra*, L. R. 16 I. A. 23 : s. c. I. L. R. 16 Calc. 473. That the plaintiff having made his purchase at a sale held in execution of a rent-decree under the Bengal Tenancy Act under s. 159 of the Act he made his purchase with powers to annul the interests defined as encumbrance in s. 161; encumbrance as used in that section includes a statutory title acquired by a trespasser by adverse possession of the land of the defaulting tenure provided such act of possession commenced after the tenure had been created. That even if he had succeeded in establishing that such adverse possession commenced after the creation of the *putni taluk*, before he could succeed, he would have to prove that under sub-s. (1) of s. 167 he had annulled the encumbrances by service of notice within one year from the date of the sale or the date on which he first had notice of the encumbrance and in the present case the plaintiff had failed herein. *Held* (as to the contention that the grant of the *putni* tenure itself was evidence of possession), that the principle that ancient documents produced from proper custody and by which any right to property purports to have been exercised may rightly be treated as presumptive evidence of possession has no application to the circumstances of the present case. *KALIKANUND MUKERJEE v. BIPRODAS PAL CHOWDRY*, (1914) 19 C. W. N. 18

PUTNI REGULATION (VIII OF 1819).

s. 8—*Publication of notices at the Collector's kutchery—Notices taken down and kept on Nazir's table for inspection of Muktears during office hours—Irregularity vitiating sale—Publication of list of putnis in arrears, defaulters and arrears, in zamindar's kutchery, if sufficient—Publication in principal village—Sale in Collector's Court-room if public sale, when people prevented from coming in freely by chaprasis—Sale at an unusually early hour, if bad.* Where it appeared that applications for sales of *putnis* under Reg. VIII of 1819 and notices thereof used to be taken down from the notice-board on the verandah of the Collectorate by the Muktears during office hours and placed on the Nazir's table and hung up again on the board at the close of the day: *Held*, that there was no proper publication of the notices which were meant for the public and not for Muktears alone and it was an irregularity which vitiated the sale. The law contemplates their unobstructed presentation to the notice of the public. *Bejoy Chand Mahatap v. Atulya Charan Bose*, I. L. R. 32 Calc. 953, and *Sachi Nandan Dutta v. Bejoy Chand Mahatap*, 11 C. W. N. 729, referred to. Where instead of

PUTNI REGULATION (VIII OF 1819)—concl'd.
s. 8—concl'd.

similar notices a list of the defaulting mahals with the names of the defaulters and the amounts due was stuck up in the zamindar's *sadar kutchery*, there was a substantial compliance with the law. Where the notice required to be served in the *mofussil* was served in the *kutchery* of the *dar-putnidar* of three only out of six mauzas covered by the *putni*, this was good service when the *dar-putnidar's kutchery* was in the principal village of the defaulting tenure. The complaint that the public had not unobstructed access to the place of sale was made out when it appeared that though the sale was held in the Court-room of the Collector (and therefore in public *kutchery*, the Collector's chaprasis who were placed at the wicket gate to keep order did not allow many persons to enter to prevent overcrowding. A defaulter cannot impeach a sale as illegal merely on the ground that it took place earlier than usual; he may however be permitted to shew that he was misled to his prejudice by the deviation from the usual practice. Effect of irregularities in sales discussed. *Maharaja of Burdwan v. Tara Sundari Debi* L. R. 10 I. A. 19 : s. c. I. L. R. 9 Calc. 619, 622, and *Maharaja of Burdwan v. Krishna Kamini Dasi*, L. R. 14 I. A. 30 : s. c. I. L. R. 14 Calc. 365, referred to. *RANJIT SINGHA v. JNANENDRA CH. SEN GUPTA* (1915) 19 C. W. N. 983

ss. 11, 15, 17, cl. (3), para. 2 and cl. (5), para. 3—*Sale under Putni Regulation after mortgagee's decree on mortgage of putni and zemindar's decree for antecedent arrears—Right to surplus sale-proceeds—Priority—First charge—Limitation.* There is nothing in the Putni Regulation contrary to the principle which underlies s. 65 of the Bengal Tenancy Act, the rent payable by the *putnidar* to the zemindar being under ss. 11 and 15 of the Regulation as under s. 65 a first charge on the tenure. Where a *putni* tenure is sold under the Regulation for the realisation, as the case may be, of arrears due for the year immediately expired or for the current year, the effect of such sale is not to reduce all former balances to personal debts of the *putnidar*. The charge is not destroyed, but is transferred to the surplus sale-proceeds. The sale in any case would not destroy the charge attaching to arrears in respect of which the zemindar has already obtained a decree prior to the sale, for the second paragraph to the third clause of s. 17 of the Regulation, even if it be opposed to the provisions of s. 65 of the Bengal Tenancy Act, has no application to such a case, for it cannot contemplate the institution of a fresh suit for recovery as a personal debt of antecedent balances in respect of which the zemindar had already obtained a decree. *Peary Mohan Mukerjee v. Sreeram Chandra Bose*, 6 C. W. N. 791, approved. *Jagannath v. Mohiuddin Mirza*, I. L. R. 37 Calc. 747, not approved. Where before the *putni* was sold under the Regulation both the zemindar and the mortgagee of the tenure had recovered decrees, the former for antecedent arrears and the latter on his mortgage. *Held*, that though

PUTNI REGULATION (VIII OF 1810)—*contd.*
 — s 11—*contd.*

under s 73 of the Transfer of Property Act the latter had a charge in respect of the mortgage dues upon the surplus sale proceeds and this charge subsisted even after the decree, the charge in favour of the zemindar in respect of arrears of rent would have preference before it, as it was a first charge under s. 63 of the Bengal Tenancy Act. The zemindar was entitled to seek his remedy by way of suit in the Civil Court without repeated recourse to the summary procedure laid down in the Regulation. *Brindaban Ch. Dey v. Brindaban Ch. Dey* L. R. 11 I 178 s. c. 13 B. L. R. 403 referred to *Quere*. Whether the limitation of two months provided by the fifth clause to s. 17 of the Regulation applies to a suit by the mortgagee against the zemindar for a declaration of his right to appropriate, in satisfaction of his own decree, the surplus sale proceeds which the zemindar has taken out in execution of his decree for antecedent balances. *BASANTA KUMAR BOSE v. ANULNA LOAN CO* (1914) 19 C. W. N. 1001

R

RAILWAY COMPANY

liability of—

See RAILWAYS ACT (IX OF 1890) s. 7
 I L. R. 37 All. 463

See REMAND I L. R. 42 Cal. 888

L ———— *Despatch of goods*
by railway—Risk, s. 11—Loss—Suit for damages
—Onus of proof

of its servants, transport agents & carriers etc.

EAST INDIA RAILWAY CO. v. NILMANTA
LOT (1913) 19 C. W. N. 95

2 ———— *Contract Act (IX*
of 1872) ss 151 and 152—Liability of Railway
Company for loss damage or destruction of goods
entrusted to it for carriage—Evidence necessary to
establish that the goods were lost when the true cause of
the loss could be ascertained—Intervention of ap-
propriate persons—If sued the R. R. & C. I.
Railway Company for the value of certain lost

RAILWAY COMPANY—*contd.*

of cotton entrusted to the railway company for carriage and accidentally burnt while being so carried. Held that the railway company, merely by getting the Court to believe that the wagon on which the goods entrusted to it had been loaded had been so loaded with ordinary care, had not done all that was needed to absolve itself but that in the absence of a direct cause the railway company had to satisfy the Court that in the management of its engines and in the whole course of drawing the wagon to the place where it caught fire the railway company observed in all respects the same degree of care and prudence which an ordinary man exercising his own valuable goods might have been expected to take under the same circumstances. When anyone has entrusted goods to a railway company for carriage and those goods are lost, damaged or destroyed while in the possession and under the control of the railway company, the fact of the loss, damage or destruction is enough to cast upon the company the burden of proving that that loss was not due to any negligence on its part. The standard of negligence is given in ss. 101 and 102 of the Indian Contract Act but no general rule universally applicable can be laid down as a rule of law deciding the amount and quality of the proof in every case which will discharge the railway company's onus. *Lothian and Edinburgh v. G. & N. Railway Company* I L. R. 10 C. 1, is an authority for the proposition that a decree ought not to be given against a railway company as a lance for loss, damage or destruction of goods loaded to it in the event it is in a position to be unable to assign the true cause of the loss. The company as liable is primarily liable for the loss but it may exonerate itself in two ways. It may show that the cause of the loss was due to a cause that could not reasonably be attributed to itself but that in other words it was altogether external and beyond the railway company's control. Second the cause may be one of the necessary incidents of the fact that it had taken such precautions against risk had it with the goods entrusted to him with such care that who ever the cause might be all such attributions to his own act, yet it must be proved that there was of such an uncommon or extraordinary character that the ordinary liability of the company is not affected. But such a defence is only available if the loss is locally established by the natural causes of all causes of an ordinary kind attributable to the hands of his servants or a third party. *Hindustan v. R. R. & C. I. Railway Co.* (1914) I L. R. 9 B. 191

3 ———— *Contract Act (IX*
of 1872) ss 151 and 152—Liability of Railway
Company for loss damage or destruction of goods
entrusted to it for carriage—Evidence necessary to
establish that the goods were lost when the true cause of
the loss could be ascertained—Intervention of ap-
propriate persons—If sued the R. R. & C. I.
Railway Company for the value of certain lost

RAILWAY COMPANY—contd.

for injury arising from negligence in the execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability. Under s. 281 of the Canada Railways Act, railway companies are put under a general obligation to carry and deliver with due care and diligence, and any one aggrieved by a breach of this duty is to have a right of action from which the companies are not to be relieved by any notice, condition or declaration if the damage arises from negligence or omission. S. 310 of the Act provides that no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Board, which is empowered to determine the extent to which such liability may be impaired, restricted, or limited, and generally to prescribe by regulation the terms and conditions under which any traffic may be carried. *Held*, that where under s. 310 and other sections which deal with special tariffs, forms of stipulation limiting liability have been approved by the Board, and the conditions for making them binding have been duly complied with, the companies are enabled in such cases to contract for complete freedom from liability for negligence. If a passenger has entered a train on a mere invitation or permission from a railway company without more and he receives injury in an accident caused by the negligence of its servants, the company is liable for damages for breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract or of a duty imposed by the general law, and in the latter case is in form a tort. But in either view this general duty may, subject to statutory restrictions, be superseded by a specific contract which may either enlarge, diminish or exclude it. If the law authorises it, such a contract cannot be pronounced to be unreasonable by a Court of Justice. The specific contract, with its incidents, either expressed or attached by law, becomes in such a case the only measure of the duties between the parties. If the contract is one which deprives the passenger of the benefit of a duty of care which he is *prima facie* entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special terms imposed. This he may be shown to have done either in person or through the agency of another. Such agency will be held to have been established when he is shown to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything to his agent. In such a case, it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to. The company may infer his intention from his conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him, and intends that the latter should arrange the terms on which he is to be conveyed, he will be precluded by so doing from afterwards alleging want of authority

RAILWAY COMPANY—concl'd.

to make any such terms as the law allows. If the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something misleading done by the company, be bound, and the principal will be bound through him. The company owes the passenger no duty which the contract is expressed on the face of it to exclude, and if he has approbated that contract by travelling under it, he cannot afterwards reprobate it by claiming a right inconsistent with it. *GRAND TRUNK RAILWAY COMPANY OF CANADA v. ALBERT NELSON ROBINSON* (1915).

19 C. W. N. 905

RAILWAY RECEIPT.*See RAILWAYS ACT (IX OF 1890), s. 72.*

I. L. R. 39 Bom. 485

Mercantile document of title, pledge of—Local custom—Charge—Holder thereof—Provincial Insolvency Act (III of 1907), s. 16, cl. (3). A railway receipt is a mercantile document of title to goods and lawful possession as pledgee of such receipt enables the holder by virtue of local custom to get possession of the goods from the carrier, and the insolvents' right to get possession under s. 16, cl. (3), of the Provincial Insolvency Act (III of 1907) ceases with the pledge. *Amarchand & Co. v. Ramdas*, 15 Bom. L. R. 890, followed. *FAKEERAPPA v. THIPPANNA* (1913).

I. L. R. 38 Mad. 664

RAILWAY RULE.*See RAILWAYS ACT. (IX OF 1890), s. 72.*

I. L. R. 39 Bom. 485

RAILWAYS ACT (IX OF 1890).

s. 72—Rule 2 made under s. 47, sub s. (1), clause (f)—Rule not valid—Delivery of goods to be carried by Railway Administration—Grant of railway receipt not essential to complete delivery. The plaintiffs brought certain goods to the railway premises and handed a consignment note to the clerk of the railway company. No receipt was given as the goods were not weighed and loaded. In the meanwhile, a fire broke out on the premises and destroyed the goods. The plaintiffs having sued the railway company for the loss of goods, the lower Court held that the company was not liable for the loss in absence of a railway receipt, as provided for in r. 2 framed under s. 47, sub-s. (1), clause (f) of the Indian Railways Act (IX of 1890). On plaintiffs' application under Extraordinary Jurisdiction: *Held*, that the commencement of the liability of the company for goods delivered to be carried under s. 72 was in no way dependent upon the fact of a receipt having been granted, but must be determined on evidence quite independently of r. 2 under s. 47, sub-s. (1), clause (f) of the Indian Railways Act (IX of 1890). *Held*, also, that inasmuch as r. 2 sought

RAILWAYS ACT (IX OF 1890)—*contd.*s. 72—*contd.*

to define and by defining changed what would otherwise be the meaning of s. 72 of the Act the rule was laid. *PER HILTON, J.* "A delivery to be carried by railway" (within the meaning of s.

on the course of business and the facts of each particular case; but it certainly may be completed before a railway receipt is granted." *PER HILTON, J.* "The delivery contemplated by a 72 is an actual delivery, and marks the beginning of the company's responsibility. That delivery would no doubt involve not merely the bringing of the goods in the railway premises but acceptance thereof by the company for the purpose of carrying the same by railway. Such acceptance may be expressed or implied in a variety of ways by the usual course of business, and may be quite independent of any receipt being granted by the company. Of course it will depend upon the circumstances of each case and the usual course of business of the Railway administration as to whether the goods can be said to be delivered to be carried by railway under s. 72 of the Act." *HANCHANDRA NATH & S. I. P. Railway Company (1915).*

I. L. R. 39 Bom. 485

s. 75—

See REMAND.

I. L. R. 42 Cal. 888

Articles of special value lost in transit—Liability of Railway Company for the loss thereof. The plaintiff who was a passenger on the defendant railway booked three packages from Howrah to Kharja. One of them contained silver and silk articles of the description mentioned in the second schedule to the Indian Railways Act as articles which must be declared, but the plaintiff did not do so. The package was lost and the plaintiff brought this suit for damages. *Held*, that s. 75 of Act IX of 1903 is one of general applicability to all classes of goods; and inasmuch as the plaintiff did not declare the contents of his trunk that was lost in transit the Railway administration was freed from all liability for the loss thereof, both as regards scheduled and non-scheduled articles contained therein. *EAST INDIAN RAILWAY CO. v. N. K. ROY (1915).*

I. L. R. 37 All. 463

s. 77—*Notice of suit to Agent—Notice to Goods Superintendent of refusal—Power of Goods Superintendent to make premises binding on Company.* When the plaintiff who was one of the owners of some bags of mustard seed denied that ten bags offered by the defendant company were his and the trial court found that the bags dispatched by the plaintiff were lost or missing. *Held*, that in the circumstances the plaintiff was bound to serve notice under s. 77 of the Indian Railways Act upon the Agent of the defendant company. A notice given by the

RAILWAYS ACT (IX OF 1890)—*contd.*s. 77—*contd.*

Goods Superintendent who there was no evidence to show ever reached the Agent was not such a notice. *Huader v. Mether, His Deputy, 13 C. W. N. 24*, distinguished and doubted. *Joshi & Co. v. The Bengal Nipper Railway Company, 15 C. W. N. 76*, *East India Railway Co. v. N. K. Roy, 17 C. W. N. 1131*, approved. The company cannot be bound by any admission or statement by the Goods Superintendent such as to satisfy the promise made before the suit to pay a liquidated sum to the plaintiff for the value of the mustard bags. *RAMES KISHORE v. THE EAST INDIAN RAILWAY CO. (1917).*

19 C. W. N. 12

RAPE.

See PENAL CODE ACT (XIV OF 1902),
AC 32 AND CL. I. L. R. 37 All. 197

RATEABLE DISTRIBUTION.

1. — *Interim Civil Procedure Code (1 of 1908) s. 45, 53—Civil Procedure Code (1 of 1908) s. 235—Special Amendment rateable distribution made under s. 73 of the Code of Civil Procedure (1 of 1908), between two mutual debtors, which does not affect or interfere the judgment-debtor, is an order in execution proceedings but is not a decree, as all the conditions enumerated in s. 47 of that Code are not present, and consequently is not appealable. *Jagdish Chandra Shukla v. Kripanshu Shukla, 1 L. R. 26 Cal. 150*, followed. *Sanyal Gangay v. Kailash Kishan, 1 L. R. 36 Bom. 126*, distinguished. It is essential for the application of s. 73 of the Code of Civil Procedure that the decree should have been passed against the same judgment-debtor. *BALMER LAWRENCE & CO. v. JATINDRA BHAYANER (1914).**

I. L. R. 42 Cal. 1

2. — *Interim decree holders.*—*Right of one to impeach another's decree only in suit and not in execution—Civil Procedure Code (1 of 1908), s. 73, applicability of—XXI, r. 42, enquiry under.* Where several decree-holders against the same judgment-debtor apply for satisfaction of their decrees out of the same fund, and one of them is entitled to show that his rival's decree is a fraudulent one, but it is not open for him to do so in execution proceedings. *Sundara v. Indan, 1 L. R. 2 Mad. 12*, followed. *S. 73, Civil Procedure Code*, is applicable only if an application for execution of the decree in the periodical form had already been made before the receipt of the assets and the fund out of which rateable distribution is made to the creditors is exhausted. Where holders of decrees of several suits apply for satisfaction of their decrees out of a fund in the custody of a court, the proper order governing their respective shares of payment is XXI, r. 42, Civil Procedure Code, and they are entitled to raise the objection to the court of administration of the fund of a decree-holder's petition of an objection so allowed does not vitiate the present one and does not go to

RATEABLE DISTRIBUTION—concl'd.

the first attaching creditor, but only prevent alienation. *Soobul Chunder Law v. Russick Lal Mitter*, I. L. R. 15 Calc. 202, 209, followed. The shares due to holders of decrees of other courts than the one which has the custody of the fund are to be distributed only according to the orders of those courts. *KATUM SAHIBA v. HAJEE MAHOMED BADSHA SAHIB* (1913). I. L. R. 38 Mad. 221

RATES AND TAXES.

Arrears of—Consolidated rate—Charge—Calcutta Municipal Act (Beng. III of 1899), ss. 223, 228—Arrear of consolidated rates, whether a first charge on the land and building in respect of which it has accrued due—Charge and mortgage, distinction between—Transfer of Property Act (IV of 1882), ss. 55, 58, 100—Bengal Tenancy Act (VIII of 1885), s. 171—Constructive notice—Bona fide purchaser for value without notice S. 228 of the Calcutta Municipal Act is not controlled by s. 223 thereof, and makes the consolidated rate, as it accrues due from time to time a first charge on the premises (subject only to arrears of land revenue). A mortgage does, whereas a charge does not, involve a transfer of an interest in specific immoveable property. *Narayana v. Venkataramana*, I. L. R. 25 Mad. 220, *Tancred v. Delagoo Bay Co.*, 23 Q. B. D. 239, *Burlinson v. Hall*, 12 Q. B. D. 347, referred to. Such a charge cannot be enforced against the property in the hands of a bona fide purchaser for value without notice. *Kishen Lal v. Gunga Ram*, I. L. R. 13 All. 28, referred to. The plea of purchaser for value without notice is a single defence, the onus of proving which is on the defendant. *Attorney-General v. Biphosphated Guano Co.*, 11 Ch. D. 327, *Wilkes v. Spooner*, [1911] 2 K. B. 473, followed. Where property with such a charge is foreclosed, by the mortgagee, constructive notice cannot be imputed to him to the same extent as to a purchaser at a private sale. *Radha Madhab v. Kalpataru*, 17 C. L. J. 209, *Brahma v. Bhola Das*, 19 C. L. J. 352, referred to. Still he should ascertain the true state of affairs before he becomes full owner thereof. Although a purchaser without notice from a person who had notice, is protected [*vide Harrison v. Fort*, (1695) *Finch's Prec. Ch.* 51] here, purchasers from such a mortgagee cannot claim the protection as, before they acquire title, they might by enquiry from the municipal authorities ascertain the precise period for which the rates were in arrears. *AKHOY KUMAR BANERJEE v. CORPORATION OF CALCUTTA* (1914)

I. L. R. 42 Calc. 625

RATIFICATION.

See MADRAS IRRIGATION CESS ACT (VII OF 1865), s. 1. I. L. R. 38 Mad. 997

See TRADING WITH THE ENEMY

I. L. R. 42 Calc. 1094

RECEIPT.

Registration—Waiver—Evidence—Registration Act (III of 1877), s. 17 (n)—Mortgage-bond—Receipt showing simple interest

RECEIPT—concl'd.

charged—Evidence Act (I of 1872), s. 92. A receipt, which purports to show that simple and not compound interest was to be charged (though the mortgage-bond contained provision for the payment of compound interest), is admissible in evidence. Such a receipt operates as a full acquittance for the money paid and requires no registration. *Jiwan Ali Beg v. Basa Mal*, I. L. R. 9 All. 108, followed. *KAILASH CHANDRA NATH v. SHEIKH CHHENU* (1914). I. L. R. 42 Calc. 546

RECEIVER.

See INSOLVENCY. I. L. R. 42 Calc. 289

See OFFICIAL RECEIVER.

1. Empowered by Court to sell and convey property in partition suit, including infant's share—Code of Civil Procedure (Act V of 1908), O. XL, r. 1, cl. (d)—Indian Trustees Act (XXV of 1866), ss. 8, 20, 32. In a partition suit in which a receiver is authorised to sell properties including the share of an infant as declared in the decree, the Court may direct the receiver to convey the properties. Under O. XL, r. 1, cl. (d) of the Code of Civil Procedure (Act V of 1908), the Court may confer on a receiver all such powers for the realization of properties and the execution of documents as the owner has. *BASIR ALI v. HAFIZ NAZIR ALI* (1915). 19 C. W. N. 317

2. Suit by, for possession of immoveable property. The plaintiffs were the receivers of the estate of one G who died leaving two widows K and N. On the 8th August, 1906, one of the co-widows (N) brought a suit for a declaration that she was entitled to a half share in the estate of G and prayed that the properties might be partitioned and her share allotted to her. In this suit, the plaintiffs were appointed receivers with all the powers provided under O. XL, r. 1, cl. (d) of the Civil Procedure Code. It was further ordered that the receivers should have power to bring and defend suits in their own name and also should have power to use the names of the plaintiff and the defendant. The plaintiffs instituted the present suit to recover possession of a certain immoveable property and for a declaration that a lease, dated 16th September, 1906, purporting to have been executed by N by virtue of which the defendant claimed to be a permanent tenant was void and inoperative. Subsequent to the institution of the present suit an order was made in the suit in which the plaintiffs were appointed receivers that the plaintiffs as receivers be at liberty to continue the present suit. It appeared that proceedings under the Lunacy Act were instituted in November, 1906, and in these proceedings the District Judge on the 24th September, 1907, held that N was of unsound mind and incapable of managing her affairs: Held, that ordinarily a suit to recover possession of property can only be brought by him in whom there is a present title to it and by his appointment no property becomes vested in a receiver. But this rule like all others is subject to modification by the legislature and the Code of Civil Procedure, in O. XL,

RECEIVER—*concll*

r 1, empowers the Court to confer upon a receiver all such powers as to bringing and defending suits as the owner himself has. That the co-owners of *G* were the present owners of the property and the suit in which the receivers had been appointed comprised that property. The receivers therefore were as competent to bring the present suit as the owners would have been. That the omission of the plaintiffs to get leave, in the suit in which they were appointed receivers to institute the present suit may have consequences adverse to them in that suit, but it cannot affect their power to bring the present suit. *CASSIN MANOOSI v. K. B. DUTT AND P. CHAUDHRI* (1914)

19 C. W. N. 45

RECEIVER IN INSOLVENCY.See *Minor* I. L. R. 42 Calc. 225**RECEIVERS REPORT.**See *PROVINCIAL INSOLVENCY ACT* (III of 1907), s. 43

I. L. R. 37 All. 429

RECIPROCAL PROMISES.See *CIVIL PROCEDURE CODE* (Act V of 1908), O. XIII, r. 2

I. L. R. 38 Mad. 959

RECORD.

— procedure when lost—

See *JUDGMENT* I. L. R. 38 Mad. 498**RECORD OF RIGHTS.**See *CRIMINAL PROCEDURE CODE* (Act V of 1908), s. 195 (1) (c)

I. L. R. 39 Bom. 310

REDEMPTION.See *MORTGAGE* I. L. R. 37 All. 634See *REDEMPTION SUIT*

— suit for—

See *CIVIL PROCEDURE CODE* (Act V 1908), ss. 11, 47

I. L. R. 39 Bom. 41

See *COMBINATION* I. L. R. 42 Calc. 531See *DEKKHAN AGRICULTURISTS' RELIEF ACT* (XVII of 1879), s. 13

I. L. R. 39 Bom. 557

See *DEKKHAN AGRICULTURISTS' RELIEF ACT* (XVII of 1879), ss. 13, 15D, 16

I. L. R. 39 Bom. 73

See *TRANSFER OF PROPERTY ACT* (IV of 1882), ss. 60 and 91

I. L. R. 38 Mad. 310

RE-ENTRY.

— right of—

See *LESSOR AND LESSEE*

I. L. R. 39 Mad. 415

REFERENCE.See *PRACTICE* I. L. R. 42 Calc. 819**REFERENCE—*concll***

*Jury trials—Power of Judge to refer the case of an accused as to whom he agrees with the verdict—Expiry of procedure—Criminal Procedure Code (Act V of 1908), s. 307 (2)—Confessions of co-accused—Corroboration—Sufficiency of circumstances raising a mere suspicion—S. 307 (2) of the Criminal Procedure Code contemplates a reference only in the case of those accused as to whom the Judge declines to accept the verdict of the Jury. When he agrees with them in respect of any particular accused he ought to acquit or convict and sentence the latter as the case may be. Confessions of the co-accused can be taken into consideration, but the Court requires corroboration before acting on them. *KURBAN v. BAHAR ALI GANI* (1914)*

I. L. R. 42 Calc. 783

REFUND.See *UNDEVELOPED LAND*

I. L. R. 42 Calc. 233

REGISTER OF BIRTH.

— admissibility of, as evidence—

See *HINDU LAW—Minor*

I. L. R. 38 Mad. 163

REGISTRATION.See *PROVIDENT INSURANCE*

I. L. R. 42 Calc. 509

See *RECEIPT* I. L. R. 42 Calc. 514See *REGISTRATION ACTS*

— family settlement—
*Distribution of family property carried out by means of mutation proceedings—Hindu law—Joint Hindu family—Exercising power of partition—The members of a Hindu family, one of whom was a minor, entered into a compromise regarding the partition of certain property in the course of mutation proceedings, and the partition agreed to was carried into effect by those proceedings. Held, that, inasmuch as the minor was represented by his father and there was no evidence of fraud or collusion, the compromise was binding on him. *HILL, J.* Also see *Pratt, I. L. R. 23 All. 292*, referred to in *Pratt v. Hill, I. L. R. 37 All. 103* (1914)*

I. L. R. 37 All. 103

REGISTRATION ACT (III OF 1877)

s. 17 (a) —

See *RECEIPT* I. L. R. 42 Calc. 514

— s. 17 (1) (b) and discharge of mortgages given with her lease of immovable property. Where a husband is at that time dead, after the lease is given to the mortgagor, in a certain order and that the mortgagor had not at the time of the mortgage any other property in which he had any right except those which he had in the lease. Held, that it was not a discharge of the mortgage, and that the mortgage was not discharged. Also see *Pratt v. Hill, I. L. R. 37 All. 103* (1914)

REGISTRATION ACT (III OF 1877)—concl'd.

s. 17—concl'd.

HEMANTA KUMARI
DESI & MIGNAPER ZEMINDARI Co. (1914)
19 C. W. N. 347

32 to 35—Presentation of documents for registration—Registration, if document is presented by an unauthorised person, not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed, effect of, on registration—Prevention of fraud, object of s. 32 to 35—Duty of Courts not to allow evasion of provisions of Act. Ss. 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration, are imperative, and their provisions must be strictly followed and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them, the deeds were held not to be validly registered, so as (under s. 49) to affect immovable property or to be received in evidence of any transactions affecting such property; or under s. 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages. A Registrar or Sub-Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or assign of such person or by an agent of such person, representative or assign duly authorized by a power of attorney executed and authenticated in the manner prescribed by s. 33 of the Act. Executants of a deed who attend a Registering Officer to admit execution of it cannot be treated for the purposes of s. 32 of the Act as presenting the deed for registration. They would no doubt be assenting to the registration, but that would not be sufficient to give the Registering Officer jurisdiction. One object of ss. 32 to 35, Registration Act, III of 1877, was to make it difficult for persons to commit frauds by means of registration under the Act; and it is the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated. *Ishri Prasad v. Baijnath*, I. L. R. 28 All. 707 and the principle laid down in *Mujib-un-nissa v. Abdur Rahim*, I. L. R. 23 All. 233; L. R. 28 I. A. 15, followed. JAMBU PRASAD v. MUHAMMAD AFTAB ALI KHAN (1914) I. L. R. 37 All. 49

REGISTRATION ACT (XVI OF 1908).

s. 17—Memorandum of arrangement between lessor and lessee, if must be stamped and registered. A document, dated the 8th March, 1885, which did not demise any property and was neither a lease nor an agreement to lease, but was and purported to be a memorandum of an arrangement which had been made with the grantees by the agent of the lessors on their behalf and under which the grantees had taken possession with effect from 12th April, 1884, was admissible in evidence although neither stamped nor registered. **KATAYANI DEBI v. PORT CANNING AND LAND IMPROVEMENT CO. (1914) 19 C. W. N. 56**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—concl'd

— s. 14—concl'd.

In re, I. L. R. 10 Mad. 98, referred to. It has to be construed strictly without enlarging its scope. *Sayad Hussein Miyan v. Collector of Kaira, I. L. R. 21 Bom. 257*, referred to. S. 14 of the Act commented on. *VENKATESHA MALIA v. RAMAYA HEGADE (1914)*

I. L. R. 38 Mad. 1192

RELINQUISHMENT.

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881) . I. L. R. 37 All. 444

See UNDER-RAIYATI HOLDING.

I. L. R. 42 Calc. 751

REMAND.

See PENSIONS ACT (XXIII OF 1871), s. 6.

I. L. R. 39 Bom. 352

————— *New case—Second appeal—Finding of fact—High Court, power of—Silk—Railway Company, liability of—Railways Act (IX of 1890), s. 75—Practice.* A new case cannot be made on behalf of the plaintiff on remand. After there has been a decision of fact in the two Courts of original and first appellate jurisdiction, the High Court cannot entertain a second appeal upon any question as to the soundness of findings of fact by the lower Appellate Court. If there is evidence to be considered the decision of the second Court, however unsatisfactory it might be, when examined, must stand final. *Ramratan Sukal v. Nandu, I. L. R. 19 Calc. 249*, referred to. The question whether silk in manufactured or unmanufactured state is to be treated as silk is a question of fact. *Brunt v. Midland Railway Company, 33 Exch. 187, Hiatunnissa v. Kailash Chandra Saha, 16 C. L. J. 259, Lakshmidas Hira Chand v. The Great Indian Peninsula Railway, 4 Bom. H. C. 129, Shaminadha Mudali v. The South Indian Railway Company, I. L. R. 6 Mad. 420, Pundalik Udaji Jadhav v. S. M. Railway Co., I. L. R. 33 Bom. 703*, referred to. *EAST INDIAN RAILWAY COMPANY v. CHANGAI KHAN (1915)* . I. L. R. 42 Calc. 888

REMAND ORDER.

See PRIVY COUNCIL, APPEAL TO.

I. L. R. 38 Mad. 509

RENT.

See STAMP ACT (II OF 1899), s. 59, SCH. 1, ART. 35, CL. (a), SUB. CL. (iii).

I. L. R. 39 Bom. 434

————— *distrain for—*

See MADRAS ESTATES LAND ACT (I OF 1908), s. 52 (2).

I. L. R. 38 Mad. 1140

————— *fixation of—*

See Agra Tenancy Act (II of 1901), s. 95.

I. L. R. 37 All. 12

RENT—concl'd.

————— *forfeiture, for non-payment of—*
See Lessor and Lessee

I. L. R. 38 Mad. 445

————— *suit for—*

See HOMESTEAD LAND.

I. L. R. 42 Calc. 638

See LIMITATION. I. L. R. 38 Mad. 101

————— *suit for, by lessee—*

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10. I. L. R. 38 Mad. 867

————— *suit for, in Revenue Court—*

See MADRAS ESTATES LAND ACT (I OF 1908) . I. L. R. 38 Mad. 33

RENT ROLL.

————— *certified extracts of—*

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), ss. 30, 35, 39, 40.

I. L. R. 39 Bom. 664

RESCUE FROM LAWFUL CUSTODY.

See WARRANT, VALIDITY OF.

I. L. R. 42 Calc. 708

RESIDUARY CLAUSE.

See WILL . I. L. R. 38 Mad. 1096

RES JUDICATA.

See AGRA TENANCY Act (II of 1901), ss. 4 AND 19 . I. L. R. 37 All. 280

See AGRA TENANCY ACT (II OF 1901), s. 95 . I. L. R. 37 All. 223

See AGRA TENANCY ACT (II OF 1901), ss. 95 AND 167. I. L. R. 37 All. 41

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . I. L. R. 39 Bom. 29

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11, EXPL. IV, O. II, R. 2.

I. L. R. 39 Bom. 138

See CIVIL PROCEDURE CODE (1908), ss. 11 AND 13 . I. L. R. 37 All. 1

See CIVIL PROCEDURE CODE (1908), s. 97. I. L. R. 39 Bom. 421 .

See FRAUD . I. L. R. 37 All. 537

See LIMITATION. I. L. R. 42 Calc. 244

1. ————— *Civil Procedure Code (Act V of 1908), s. 11—Judgment or findings on two issues, one of which alone was sufficient—Both findings, res judicata.* Where a judgment is based on the findings on two issues, the findings on both the issues will operate as *res judicata*, though the finding on only one would be sufficient to sustain the judgment. *Krishna Behari Roy v. Brojeswari Chowdranee, L. R. 2 I. A. 283*, and *Venkayya v. Narasamma, I. L. R. 11 Mad. 204*, followed. *VENCATARAJU v. RAMANAMMA (1913)*
I. L. R. 38 Mad. 158

REVENUE SALE LAW (ACT XI OF 1859)—*concl.*s. 33—*concl.*

order on review *ultra vires* and upheld his previous order setting aside the sale, and also awarded possession and mesne profits to the plaintiffs. *Held*, that the decree was not one annulling a sale as contemplated by s. 34 of Act XI of 1859, as it only held that the Commissioner's order setting aside the sale must stand good. That s. 34 did not apply to this case as it was not a suit under s. 33 of the Act to annul a sale, the contention of the plaintiffs being that there was no subsisting sale to be annulled. S. 34 refers to cases brought under s. 33, and the rule of limitation laid down in s. 34 (requiring the decree holder to apply for execution within six months of the decree) applies only to suits brought under s. 33. *BAHAYATH GOENKA v. BAHAYATH SINGH* (1914)

13 C. W. N. 464

s. 37—

See OCCUPANCY HOLDING

I. L. R. 42 Calc. 745

— *Taluk in existence before permanent settlement*—Portion thereof transferred and held under a new name—such portion if *predicated*, when it can be traced to original taluk. When a portion of a taluk existing from before the permanent settlement is transferred and that portion is subsequently held in proprietary *pans* under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk, the portion so transferred is also protected under a 37 Act XI of 1859. *DOSAMATY CHOMPURANI v. NARENDRA KISHORE ROY* (1913)

19 C. W. N. 79

s. 37, cl. (4)—

See HOMESTEAD LAND

I. L. R. 42 Calc. 608

REVERSIONER.

— consent of—

See HINDU LAW—ALLEGATION

I. L. R. 42 Calc. 570

— right of—

See APPEAL TO PRIVY COUNCIL

I. L. R. 38 Mad. 406

REVIEW OF JUDGMENT.

See CIVIL PROCEDURE CODE (1908), II, XLVII, s. 1 I. L. R. 37 All. 410

— *Application for review on ground of discovery of new matter or evidence*—*Appeal*—“*strict proof*,” meaning of—*Code of Procedure Code (1st XII of 1859)* ss. 626, cl. (3), 627, *Code of Procedure Code (Act I of 1908)* II, XLVII, ss. 1 (2) (b), 7 (1) (b). In s. 626 of the Code of 1859 “*strict proof*” does not mean proof that convinces the Appellate Court but that there must be legal proof adduced before the Court that has to deal originally with the question of granting a review. The whole scheme of the Act requires that with proper safeguards the Court of first

REVIEW OF JUDGMENT—*concl.*

instance is the proper Court to determine whether or not there should be a review, but that before a review is granted those safeguards must be observed. *PER JERVIS C. J.* “*strict proof*” has one of two meanings, either the *material* proof of the judicial mind on a certain fact, or the *means* which may help towards arriving at that conclusion—the use of the word “*strict*” points to the second of these two meanings and “*strict proof*” means anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence. His formalities that is prescribed and in the result that is described. *PER WOODHOUSE J.* Cl. (1) of sub-s. (1) of s. 7 of O. XLVII of the new Code does not refer to the weight or sufficiency of the evidence. If the legal formalities are observed it is no objection that the probative force of evidence legally taken appears to be different to the Appellate Court from what it appeared to the Court granting review. “*strict proof*” means *proof* according to the formalities of law. It does not refer to sufficiency of proof in securing a particular conviction. Whether the proof is according to law or not is within the jurisdiction of the Appellate Court to determine, the question of sufficiency of evidence is for the Court which grants the review. *GOSWAMI DAS v. DEBAN MOHAN SINGH*, I. L. R. 22 Calc. 731, *LAYMAN CHANDER NARAI CHAKRABARTY v. MODHU CHANDER NARAI*, II I. L. R. (F. B.) 423, 20 W. R. 81, *CHANDER CHANDRANATH v. LAKSHMAN DAS*, 25 W. R. 324, *ANANDMOHAN MANDAL v. HIRAN MANDAL*, 24 W. R. 186, referred to. *ANAND MOHAN v. MANDIRIA LAL DAS* (1915)

I. L. R. 42 Calc. 820

REVISION.

See APPELLATE I. L. R. 42 Calc. 612

See CIVIL PROCEDURE CODE (1908), s. 152 I. L. R. 37 All. 503

See CRIMINAL PROCEDURE CODE, s. 365 I. L. R. 37 All. 127

See CRIMINAL PROCEDURE CODE, 1908 s. 435 I. L. R. 38 Mad. 1025

See CRIMINAL PROCEDURE CODE, ss. 435 and 562 I. L. R. 37 All. 31

See CRIMINAL PROCEDURE CODE, s. 537 I. L. R. 37 All. 110

See DEPARTMENTAL APPEALS, s. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

See DEPARTMENTAL APPEALS, s. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

See DEPARTMENTAL APPEALS, s. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

See DEPARTMENTAL APPEALS, s. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

See DEPARTMENTAL APPEALS, s. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

See DEPARTMENTAL APPEALS, s. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

REVISION—concl'd.

interfere in revision, with such order—Nepal, whether a "Foreign State"—Criminal Procedure Code (Act V of 1898), ss. 135, 139, 191—Extradition Act (XV of 1903), ss. 7, 15. Nepal is not a "Foreign State" within the meaning of the Indian Extradition Act (XV of 1903). Where a warrant has been issued by the Political Agent, under s. 7 of the Act, its execution by the District Magistrate in British India, in accordance with the Act, is an executive act, and the High Court cannot interfere in revision with the proceedings of the Magistrate and the order to surrender the fugitive criminal, but if the latter considers himself aggrieved thereby, he can invoke the action of the Government under s. 15. The power of the High Court, however, to interfere under s. 491 of the Criminal Procedure Code, which applies whatever be the occasion of the deprivation of the liberty of the subject, remains untouched by the Extradition Act. *GULLI SAHU v. EMPEROR* (1914) I. L. R. 42 Calc. 793

REVISIONAL AND APPELLATE JURISDICTIONS.

Distinction between.
Held (as regards the application for revision of the order of the District Judge), that a Court in the exercise of its appellate jurisdiction investigates the facts, and, if necessary, substitutes its own appreciation of the evidence for that of the primary Court, but when the Court as a Court of revision looks into the evidence, it does so with a view to determine whether the subordinate Court has assumed a jurisdiction which it did not possess, or declined a jurisdiction which it did possess, or has in the exercise of its jurisdiction acted illegally or with material irregularity, and in the present case the High Court could not be rightly invited by the petitioner to examine the evidence with a view to determine whether the District Judge correctly appreciated its effect. *RASHMONI DASSI v. GANODA SUNDARI DASSI* (1914)

19 C. W. N. 84

REVIVOR OF DECREE.

_____ of Original Side of the High Court—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 183. I. L. R. 38 Mad. 1102

REVOCATION.

See PROBATE. I. L. R. 42 Calc. 480

_____ of authority—

See GUARDIAN. I. L. R. 38 Mad. 807

RIGHT OF SUIT.

_____ destruction of—

See DEED . I. L. R. 38 Mad. 746

See RIGHT TO SUE.

RIGHT OF WAY.

See PUBLIC ROAD. I. L. R. 37 All. 9

RIGHT TO SUE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 6 (e).

I. L. R. 38 Mad. 138

_____ survival of—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

ROAD-CESS.

_____ sale for arrears of—

See MUTT, HEAD OF.

I. L. R. 38 Mad. 356

ROYALTY.

_____ action for—

See TRADE-MARK. I. L. R. 42 Calc. 262

RULING CHIEF.

_____ suit against—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 86 . . . I. L. R. 38 Mad. 635

RYOT.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. I. L. R. 38 Mad. 1155

RYOTI LAND.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. I. L. R. 38 Mad. 738

RYOTI RENT.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. I. L. R. 38 Mad. 738

S**SALE.**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62 AND 97.

I. L. R. 38 Mad. 887

See MAHOMEDAN LAW—PRE-EMPTION.

I. L. R. 37 All. 522

See MORTGAGE.

I. L. R. 42 Calc. 780

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s. 34.

I. L. R. 37 All. 452

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 54.

I. L. R. 37 All. 631

_____ agreement to reconvey—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54.

I. L. R. 39 Bom. 472

_____ contract of—

See CHUKANI RIGHT.

I. L. R. 42 Calc. 28

_____ for arrears of rent—

See LIMITATION ACT (IX OF 1908), s. 2.
I. L. R. 38 Mad. 837

SALE—contd.

knowledge of—

See LIMITATION ACT (IX of 1908), SCH. I, ART 120 I. L. R. 38 Mad. 67

of mortgagor's rights—

See BUNDLEHAND ALIENATION ACT (II of 1903), s. 3

I. L. R. 37 All. 407

to prior mortgages after creation of a pulse mortgage—

See MORTGAGE I. L. R. 38 Mad. 18

validity of—

See CIVIL PROCEDURE CODE (ACT V of 1908), ss. 47 AND 50.

I. L. R. 38 Mad. 1978

1. ——— Court sale—Acceptance of bid, if incomplete without Court's sanction—Court and Nazir's respective functions in regard to bids. *Per* COXE, J.—Under the rules, it is the Nazir's business to complete the sale, though the Court (as well as the Nazir) has a discretion to decline acceptance of the highest bid, when the price offered appears so clearly inadequate as to make it advisable to do so. The Court has a quasi-revisional discretion in the matter and is not required itself to knock down the property. If a person goes to bid at a sale and in full knowledge of this condition offers bids for the property, and the property is knocked down to him, the mere fact that the Court has subsequently the discretion to confirm or annul the Nazir's action does not leave it open to the bidder to withdraw his bid. *Quare* Whether a second appeal lies from an order refusing leave to the decree holder to withdraw his bid *RAJENDRA PRASAD JHA v. UPENDRA NATH JHA* (1913)

19 C. W. N. 633

2. ——— ——— Execution sale, decree reversed after—Purchaser in parts by decree holder, by a defendant not a judgment debtor and by a stranger, how affected—Mother of infant defendants appointed guardian without express consent—Decree of lands infants—Infants' interest of passes at sale. A Court is not competent to appoint the mother of infant defendants their guardian ad litem without her express consent. Where in a mortgage suit the mother, who was proposed by the plaintiff as guardian, did not appear or signify her willingness to act as guardian ad litem of the infant defendants, but the Court nevertheless appointed her guardian and the suit ended in a decree, and a sale of the infants and others' properties *Held*, that the infants were not properly before the Court and were not bound by the decree, and the sale did not pass the right, title and interest of the infants. Where a decree is set aside subsequent to a sale in execution of the decree, the sale will be cancelled if the purchaser has been made by the decree holder but not when the purchaser is a stranger. The sale will also be cancelled when the purchaser through

SALE—contd.

modified in exceptional circumstances, e.g., when the mortgaged properties have already been converted into money by operation of law *NARENDRA (HENDRA) MANDAL v. JONESKHA NARAYAN ROY* (1914) 19 C. W. N. 537

SALE-DEED.

See CONSTRUCTION OF DEED.

I. L. R. 39 Bom. 119

price specified in—

See EVIDENCE ACT (I of 1872), s. 52.

I. L. R. 38 Mad. 314

Covenant for title, breach of—Limitation Act (IX of 1908), Art. 116—Transfer of Property Act (IV of 1922), s. 55(2). A suit for compensation for breach of an express or implied covenant for title and quiet enjoyment in respect of a sale-deed executed after coming into force of the Transfer of Property Act is governed by article 116 of the Limitation Act. Case law reviewed. *Sulayya Fiddhar v. Rajayappa Reddy*, (1914) Mad. W. N. 316, approved. Covenant for title under s. 55(2) of the Transfer of Property Act is annexed to the contract of sale as well as to the conveyance. *ARIYACHARI v. RAMAIAH* (1914) I. L. R. 38 Mad. 1272

SALE FOR ARREARS OF REVENUE.

See REVENUE & SALE LAW.

1. ——— ——— *Selling under sale—Irregularity—Mistake under Act XI of 1902 paid—Embalment charges deemed under Act XI of 1902 as for arrears of revenue and not of under Public Demands Recovery Act (Beng. Act I of 1902) as amended by Beng. Act I of 1907—Embalment Act (Beng. Act II of 1902). In this case the High Court set aside a sale for arrears of revenue, holding that where the Collector had acknowledged payment in full of the arrears of land revenue to which the sale had been directed and had directed to proceed by certificate procedure against an arrear of different character, and had accordingly directed a sale under that procedure, he could not turn round and treat the arrear under the certificate as an arrear of land revenue to which any notice to the parties under s. 3, and proceed to and under the land revenue procedure of the same ground that no special exemption had been passed. The embalment charges ordered to be levied under the Civil Sale Act (Beng. Act I of 1902) as amended by Beng. Act I of 1907 were taken out of the payment of Act XI of 1902 charges and could form a part of an arrear under s. 3, and they could not be treated as arrears of land revenue. The same would be, not being a new arrear of land revenue was not to be set aside. An appeal to which notice was demanded by the Collector of the revenue of C. Muzaffar, who said they are for arrears of*

SALE FOR ARREARS OF REVENUE—concl'd.

terfere with it. *DHIRAJ CHANDRA BOSE v. HARI DAS DEBI* (1914) . I. L. R. 42 Calc. 765

2. ————— *Selling aside sale—Defect in specification of property to be sold in notification of sale—Ijmal share in property where there are many separate accounts opened—Revenue Sale Law (Act XI of 1859) ss. 6, 10, 11, 13, 33—Inadequacy of price caused by want of proper specification of the property for sale. The ijmal or joint share in a mahal in which 148 of the owners of specific but undivided shares had obtained from the Collector separation of accounts under ss. 10 and 11 of Act XI of 1859 was put up to sale for arrears of revenue, and purchased by the respondent. In the notification under ss. 6 and 13 of the Act, the specification of the share to be sold was in the following terms:—"Ijmal share which cannot be specified excluding the separate accounts, number—." Then followed a list of the 148 separate accounts referred to, and at the end it was stated that "All other shares besides that specified are excluded from the sale." And the entry in column 5 (the specification column) was "The ijmal share cannot be particularised owing to separate accounts having been opened. The shares to be sold are those given in a separate sheet after excluding the shares in respect of which the separate accounts have been opened." In a suit to set aside the sale:—*Held* (reversing the decision of the High Court), that the notification of sale was insufficient and irregular, and not in compliance with the requirements of the law. Each case must depend on its own particular facts; and what had to be considered was whether, having regard to all the circumstances, the specification was sufficiently clear to induce likely buyers to appear and bid at the sale. It was not enough that they might go and obtain the requisite information from the Collector's office: the particulars in the notice should be sufficient in themselves to tell purchasers what they were invited to bid for. *Held*, also, on the evidence, that the property had been sold at an inadequate price, and that the lowness of the price was due to the defectiveness of the specification of the property to be sold in the notification of sale, which was not merely an irregularity but a defect that rendered the sale void. *RAVANESHWAR PRASAD SINGH v. BAIJNATH RAM GOENKA* (1915)*

I. L. R. 42 Calc. 897

SALE OF GOODS.

— *Bought and sold notes*
— "Bought by your order and for your account from our principals"—Principal and Agent—Personal liability of broker—Contract Act (IX of 1872), s. 270 (2)—Broker, an intermediary—Contract of employment—Award. Where a broker signed and sent to a party a bought note in the following terms: "We have this day bought by your order and for your account from our principals . . . 250 bales of jute . . . (name) Brokers," and a corresponding sold note was signed and sent by the broker to another party,

SALE OF GOODS—concl'd.

the names of the principals being disclosed to each other, by the broker, at a subsequent date:—*Held*, in proceedings taken by the buyer, that the broker was merely an intermediary and not an agent for sale, and was not liable under s. 230(2) of the Contract Act. The contract (if any) between the broker and the buyer was a contract of employment, the employment being to negotiate, and not to sell, on behalf of another. *Southwell v. Bowditch*, L. R. 1 C. P. 374, followed. *Gubhoy v. Aetoom*, I. L. R. 17 Calc. 449, distinguished. *PATIRAM BANERJEE v. KANKINARRAH CO., LD.* (1915) I. L. R. 42 Calc. 1050

SALES IN EXECUTION.

— duty of Courts in India in conducting—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, s. 86.

I. L. R. 38 Mad. 387

SANAD.

— construction of—

See JAIGIR. I. L. R. 42 Calc. 305

See RESUMPTION. I. L. R. 39 Bom. 279

SANCTION.

See PATNI LEASE.

I. L. R. 42 Calc. 1029

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195 (1) (c).

I. L. R. 39 Bom. 310

See CRIMINAL PROCEDURE CODE, s. 195, cl. (6). I. L. R. 37 All. 439

See CRIMINAL PROCEDURE CODE, ss. 195 AND 537. I. L. R. 37 All. 283

— for false complaint—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195.

I. L. R. 38 Mad. 1044

See CRIMINAL PROCEDURE CODE, s. 403.

I. L. R. 37 All. 107

— *Offences committed in the Court of a Deputy Magistrate—Transfer of same from the sub-division—Successor in office—Application for sanction to another Deputy Magistrate subsequently posted to the sub-division—Power of latter to grant sanction—Criminal Procedure Code (Act V 1898), s. 195. Where there are several Deputy Magistrates at a place, and one of them is transferred, the Deputy Magistrate who comes to fill the gap is not the successor in office of the outgoing Magistrate. *Mohesh Chandra Shah v. Emperor*, I. L. R. 35 Calc. 457, referred to. Where a proceeding under s. 107 of the Code, during the course of which a forged pattah was filed and evidence given in support thereof, was disposed of by H. K. G., a Deputy Magistrate, who became afterwards the officer next senior to the Sub-divisional Magistrate, and on the transfer of the former, two other Deputy Magistrates became*

SANCTION FOR PROSECUTION—*concl.*

successively the rest senior officers, and ultimately K. L. M., a Deputy Magistrate, joined the subdivision as the next senior officer, and an application was made to him for sanction to prosecute the petitioners for offences, under ss. 471 and 193 of the Penal Code, committed in the Court of H. K. G. —*Held*, that K. L. M. was not the successor in office of H. K. G. and had no power to grant sanction under the circumstances. *GIRISH CHANDRA RAY v. SARAT CHANDRA BISCH* (1914).
L. L. R. 42 Calc. 687

SANCTION TO SUE.

to two persons jointly—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), ss. 14 AND 18.
L. L. R. 38 Mad. 1192

SANYASIS.

See HINDU LAW—SUCCESSION.
L. L. R. 39 Bom. 168

SAPINDA RELATIONSHIP.

See HINDU LAW—INHERITANCE.
L. L. R. 42 Calc. 384

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See JURISDICTION.
L. L. R. 42 Calc. 116

SEAMAN.

See MERCHANT SEAMEN ACT (I OF 1859), s. 23, cl. 4.
L. L. R. 39 Bom. 558

SEARCH WARRANT.

See PENAL CODE ACT (XV OF 1860), ss. 335, 323. L. L. R. 37 All. 353

SEAWORTHINESS.

See BILL OF LADING.
L. L. R. 38 Mad. 941

SECOND APPEAL.

See HOMESTEAD LAND.
L. L. R. 42 Calc. 638

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192.
L. L. R. 38 Mad. 635

See PRE-EMPTION. L. L. R. 37 All. 324

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 11, Art. 13.
L. L. R. 39 Bom. 131

See REMAND. L. L. R. 42 Calc. 585

See ———— *boundary dispute*—*Thak* map and Government *chawki*, which is to be preferred—*Chawki* assumed to be public documents and therefore preferred—*Error* if law officers were to be swayed by evidence—*Remand*. Where the lower Appellate Court in determining a question of boundary preferred certain Government *Chawki* of the year 1848 to the *Thak* map, on the assets, then made without enquiry, that the *Chawki* were public documents. *Held*, that if they were private documents, it was incompetent for the High Court to say to what extent the

SECOND APPEAL—*concl.*

lower Appellate Court was influenced by the idea that the *chawki* were public documents and the same should be remanded for a finding as to whether the *chawki* were public or private documents. That but for this, both the *Thak* and the *chawki* being evidence, it was for the lower Appellate Court to attach such value as it thought proper to each of them and the High Court in second appeal would not go into the weight to be attached to each. *NARAYAN KISHORE HAY v. HANIMA HAY* (1915).
19 C. W. N. 1015

2. ———— *second appeal, if less in value for rent value than house rent and exceeding Rs. 500 is value. In suits for rent (other than house rent) although the value thereof does not exceed Rs. 500 a second appeal lies to the High Court. NARAYAN KISHORE HAY v. HANIMA HAY* (1914).
19 C. W. N. 1033

SECRETARY OF STATE.

——— *MORTGAGE by*—
See BOMBAY CITY LAND REVENUE ACT (LXXII OF 1876), ss. 20, 21, 22, 61.
L. L. R. 39 Bom. 644

SECURITIES.

See TRUSTEE. L. L. R. 38 Mad. 71

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, ss. 110 AND 324. L. L. R. 37 All. 10

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, ss. 103 AND 32. L. L. R. 37 All. 230

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, s. 107. L. L. R. 37 All. 32

See CRIMINAL PROCEDURE CODE, ss. 107 AND 117. L. L. R. 37 All. 30

SELF-ACQUISITION.

See MALABAR LAW. L. L. R. 38 Mad. 63

SELLER.

duty of—
See CHARGES HONOR. L. L. R. 42 Calc. 28

SENTENCE.

See PRACTICE. L. L. R. 39 Bom. 328

SEPARATION.

evidence of—
See HINDU LAW—MARRIAGE &c.
L. L. R. 42 Calc. 1173

SERVICE OF SUMMONS.

See PRACTICE. L. L. R. 42 Calc. 67

SERVICE TENURE.

See GRANT. I. L. R. 39 Bom. 68
 See MADRAS REGULATION (XXV OF 1802)
 s. 4. I. L. R. 38 Mad. 620

SERVIENT TENEMENT.

See EASEMENT. I. L. R. 42 Calc. 164

SESSIONS JUDGE.

— powers of—

See CRIMINAL PROCEDURE CODE, s. 339.
 I. L. R. 37 All. 331

SESSIONS TRIAL.

See CRIMINAL PROCEDURE CODE, s. 339.
 I. L. R. 37 All. 331

SET-OFF.

See CIVIL PROCEDURE CODE (ACT V OF
 1908), O. VIII, R. 6.
 I. L. R. 39 Bom. 131

————— *Equitable set-off, when
 to be entertained—Court may impose terms on de-
 fendants—Barred debt, claim of set-off in respect
 of. The right of set-off exists not only in cases
 of mutual debits and credits but also where cross-
 demands arise out of the same transaction or are
 so connected in their nature and circumstances
 as to make it inequitable that the plaintiff should
 recover and the defendant be driven to a cross-
 suit. Clarke v. Ruthnavaloo, 2 Mad. H. C. R.
 296, followed. As the inquiry into the cross-
 demand made in this case by the defendants
 would involve great delay, the High Court allowed
 the inquiry to be made in this suit on certain terms
 imposed on the defendants. RAMDHARI SINGH
 v. PERMANUND SINGH (1913) 19 C. W. N. 1183*

SETTING ASIDE SALE.

See SALE FOR ARREARS OF REVENUE.
 I. L. R. 42 Calc. 765

SETTLEMENT.

See STAMP ACT (II OF 1899), s. 4.
 I. L. R. 37 All. 159, 264

————— of family property—

See REGISTRATION. I. L. R. 37 All. 105

SHAH JOG HUNDI.

See HUNDI SHAH JOG.
 I. L. R. 39 Bom. 513

SHARE CAPITAL.

See PROVIDENT INSURANCE.
 I. L. R. 42 Calc. 300

SHARE-HOLDER.

See COSTS. I. L. R. 39 Bom. 383

————— petition by—

See COMPANY. I. L. R. 39 Bom. 16

SHEBAIT.

See EXECUTION OF DECREE.
 I. L. R. 42 Calc. 440

SHEBAIT—concl'd.

See HINDU LAW—RELIGIOUS ENDOW-
 MENT. I. L. R. 42 Calc. 536
 See LIMITATION. I. L. R. 42 Calc. 244

SHIP.

See ARREST OF SHIP.

SHIPPING.

See MERCHANT SEAMEN ACT (I OF 1859)
 s. 83, CL. (4). I. L. R. 39 Bom. 553

SHROTRIEMDAR.

See MADRAS ESTATES LAND ACT (I OF
 1908), s. 8, EXCEP.
 I. L. R. 38 Mad. 843

SIMPLE INTEREST.

See RECEIPT. I. L. R. 42 Calc. 546

SINGLE JUDGE.

See HIGH COURTS ACT (24 & 25 VICT.
 c. 104) SS. 2, 9 AND 13.
 I. L. R. 39 Bom. 604

————— order by—

See APPEAL. I. L. R. 42 Calc. 735

SLAVERY BOND.

See BOND. I. L. R. 42 Calc. 742

SMALL CAUSE COURT.

See CIVIL PROCEDURE CODE (ACT V OF
 1908), s. 24. I. L. R. 38 Mad. 25
 See PROVINCIAL SMALL CAUSE COURTS
 ACT (IX OF 1887), SCH. II, ART. 13.
 I. L. R. 39 Bom. 131

SOHAG GRANT.

See HINDU LAW—CUSTOM.
 I. L. R. 42 Calc. 582

SON.

————— birth of, subsequent to the exe-
 cution of the will—

See HINDU LAW—WILL.
 I. L. R. 38 Mad. 369

————— death of, before the testator—

See HINDU LAW—WILL.
 I. L. R. 38 Mad. 369

————— liability of, to pay father's debts—

See MALABAR LAW.
 I. L. R. 38 Mad. 527

SONTHAL PARGANAS.

See JURISDICTION.
 I. L. R. 42 Calc. 116

**SONTHAL PARGANAS ACT (XXXVII OF
 1855).**

————— s. 2—

See JURISDICTION.
 I. L. R. 42 Calc. 116

SOUTHAL PARGANAS JUSTICE REGULATION (V OF 1893).

part 2, s. 10—

See JURISDICTION

I. L. R. 42 Calc. 116

SOUTHAL PARGANAS REGULATION (III OF 1872.)

ss. 11, 14, 25, 25A—

1. — *Record of rights effect of—Suit challenging record, immutability of—Special Limitation—Limitation Act (IX of 1908), s. 29, how far affects Regulation III of 1872—Minors, how affected by the Regulation.* The plaintiffs some of whom were minors sued the defendants for partition of lands held in common but not as joint family property. In the record of rights prepared under Reg. III of 1872 the defendants had been recorded as proprietor and molaradar in respect of the lands. The suit was brought after three years from the date of the publication of the record. Held, that the policy of Regulation III of 1872 was to have a complete record of rights and interests in land in the Southal Parganas and to exclude the jurisdiction of Civil Courts except in certain matters provided for in the Regulation. That the suit so far as it regarded the proprietary rights in the land was barred by limitation under s. 25A of the Regulation. That the Limitation Act is applicable to the Southal Parganas, but s. 29 of Act IX of 1908 saves all provisions of local laws as to limitation and does not therefore affect the three years' rule under s. 25A of the Regulation. That the Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act have reference to the periods of limitation prescribed in that Act. That the notice provided by s. 14 is to the people of the village irrespective of age or intelligence and as the law makes the record of rights conclusive proof of the rights and interests therein recorded the defendants could not be called upon to prove the service of the required notice. *JAMES PRASAD DAS v. RAJE LAL DAS* (1914) 19 C. W. N. 499

2. — *Effect of the Regulation on the jurisdiction of Civil Courts—Facts necessary for suit to come within s. 25A—Did not plaintiff's *thakwani* grant, share in, if a right of a "zaminar or other proprietor." The plaintiff brought a suit for declaration of his title to a share in a certain manna in the Southal Parganas which formed the subject of a *thakwani* grant and for registration of his name in the settlement records in respect thereof. It appeared that the manna was payable to the *thakwani* and no land revenue was payable direct to the Government in respect of the land which was not free for Government revenue. Held, that the effect of ss. 11, 14 and 25 of Reg. III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s. 25A. That in order that the plaintiff's case should fall within the provisions of s. 25A,*

SOUTHAL PARGANAS REGULATION (III OF 1872)—*contd.*s. 11—*contd.*

it was essential for the plaintiff to show that he was a zamindar or other proprietor, and the interest in land like that claimed by the plaintiff did not come within the description of a right of a "zaminar or other proprietor." That the only remedy the plaintiff had was to apply to the Government under s. 25 of the Regulation to direct the revision of the record of rights. *SARU DAS v. PARSATI KUMARI* (1914)

19 C. W. N. 542

ss. 5, 6—

See JURISDICTION.

I. L. R. 42 Calc. 116

SOVEREIGN PRINCE.

suit against—

See CIVIL PROCEDURE CODE (Act V of 1908), s. 80.

I. L. R. 35 Mad. 525

SPECIAL COURT.

When excludes jurisdiction of ordinary Courts. Before the partition of the ordinary Courts of the country can be excluded by a special Court, there must be clear words in the statute excluding such jurisdiction. *SARU BHUVAN DAS v. BURESH CHANDRA DAS NAIK* (1915) 19 C. W. N. 626

SPECIAL TRIBUNAL.

See MAHARAJA'S MUNICIPAL ACT (III of 1908)

I. L. R. 35 Mad. 11

SPECIFIC PERFORMANCE.

See CIVIL PROCEDURE CODE (Act V of 1908), O. II, r. 2.

I. L. R. 35 Mad. 615

suit for—

See HINDU LAW—MARRIAGE.

I. L. R. 35 Mad. 1167

SPECIFIC RELIEF ACT (I OF 1877).

s. 2—

1. — *Effect of the Regulation on the jurisdiction of Civil Courts—Facts necessary for suit to come within s. 25A—Did not plaintiff's *thakwani* grant, share in, if a right of a "zaminar or other proprietor." The plaintiff brought a suit for declaration of his title to a share in a certain manna in the Southal Parganas which formed the subject of a *thakwani* grant and for registration of his name in the settlement records in respect thereof. It appeared that the manna was payable to the *thakwani* and no land revenue was payable direct to the Government in respect of the land which was not free for Government revenue. Held, that the effect of ss. 11, 14 and 25 of Reg. III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s. 25A. That in order that the plaintiff's case should fall within the provisions of s. 25A,*

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See GRANT. I. L. R. 39 Bom. 68
 See MADRAS REGULATION (XXV OF 1802)
 s. 4. I. L. R. 38 Mad. 620

SERVIENT TENEMENT.

See EASEMENT. I. L. R. 42 Calc. 164

SESSIONS JUDGE.

— powers of—
 See CRIMINAL PROCEDURE CODE, s. 339.
 I. L. R. 37 All. 331

SESSIONS TRIAL.

See CRIMINAL PROCEDURE CODE, s. 339.
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See CIVIL PROCEDURE CODE (ACT V OF
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SETTLEMENT.

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SHARE-HOLDER.

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SHEBAIT.

See EXECUTION OF DECREE.
 I. L. R. 42 Calc. 440

SHEBAIT—concl'd.

See HINDU LAW—RELIGIOUS ENDOW-
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See MADRAS ESTATES LAND ACT (I OF
 1908), s. 8, EXCEP.
 I. L. R. 38 Mad. 843

SIMPLE INTEREST.

See RECEIPT. I. L. R. 42 Calc. 546

SINGLE JUDGE.

See HIGH COURTS ACT (24 & 25 VICT.
 c. 104) SS. 2, 9 AND 13.
 I. L. R. 39 Bom. 604

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SMALL CAUSE COURT.

See CIVIL PROCEDURE CODE (ACT V OF
 1908), s. 24. I. L. R. 38 Mad. 25
 See PROVINCIAL SMALL CAUSE COURTS
 ACT (IX OF 1887), SCH. II, ART. 13.
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SOHAG GRANT.

See HINDU LAW—CUSTOM.
 I. L. R. 42 Calc. 582

SON.

————— birth of, subsequent to the exe-
 cution of the will—

See HINDU LAW—WILL.
 I. L. R. 38 Mad. 369

————— death of, before the testator—

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 I. L. R. 38 Mad. 369

————— liability of, to pay father's debts—

See MALABAR LAW.
 I. L. R. 38 Mad. 527

SONTHAL PARGANAS.

See JURISDICTION.
 I. L. R. 42 Calc. 116

SONTHAL PARGANAS ACT (XXXVII OF
 1855).

————— s. 2—

See JURISDICTION.
 I. L. R. 42 Calc. 116

SANTHAL PAROANAS JUSTICE REGULA-
TION (V OF 1893).

part 2, s. 10—

See JURISDICTION

I. L. R. 42 Calc. 116

SANTHAL PAROANAS REGULATION (III OF
1872.)

ss. 21, 24, 25, 25A—

1. ———— *Record of rights effect of—Suit challenging record, maintainability of—Special limitation—Limitation Act (IX of 1908), s. 29, how far affects Regulation III of 1872—Minors, how affected by the Regulation.* The plaintiffs some of whom were minors sued the defendants for partition of lands held in common but not as joint family property. In the record of rights prepared under Reg III of 1872 the defendants had been recorded as proprietor and mokaradars in respect of the lands. The suit was brought after three years from the date of the publication of the record held, that the policy of Regulation III of 1872 was to have

land was barred by limitation under s. 25A of the Regulation. That the Limitation Act is applicable to the Santal Parganas, but s. 29 of Act IX of 1908 saves all provisions of local laws as to limitation and does not therefore affect the three years' rule under s. 25A of the Regulation. That the Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act has reference to the periods of limitation prescribed in that Act. That the notice provided by s. 14 is to the people of the village irrespective of age or intelligence and as the law makes the record of rights conclusive proof of the rights and interests therein recorded the defendants could not be called upon to prove the service of the required notice. *JANAKI PERSAD JHA v. RAJ LAL JHA* (1916) 19 C. W. N. 409

2. ———— *Effect of the Regulation on the jurisdiction of Civil Courts—Liabilities necessary for suit to come within s. 25A—Santal ghatali through grant, share in, of a right of a "zamindar or other proprietor." The plaintiff brought a suit for declaration of his title to a share in a certain manor in the Santal Parganas which formed the subject of a ghatali through grant and for registration of his name in the settlement records in respect thereof. It appeared that rent was payable to the ghatali and no land revenue was payable to the Government in respect of the land which was not free from Government revenue. Held, that the effect of ss. 11, 14 and 23 of Reg III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s. 25A. That in order that the plaintiff's case should fall within the provisions of s. 25A,*

SANTHAL PAROANAS REGULATION (III OF
1872)—*contd.*s. 11—*contd.*

It was essential for the plaintiff to show that he was a zamindar or other proprietor, and the interest in land like that claimed by the plaintiff did not come within the description of a right of "a zamindar or other proprietor." That the only remedy the plaintiff had was to apply to the Government under s. 23 of the Regulation to direct the revision of the record of rights. *NAHAI DAS v. PARRATI KUMARI* (1914)

19 C. W. N. 342

s. 5, 6—

See JURISDICTION.

I. L. R. 42 Calc. 116

SOVEREIGN PRINCE.

suit against—

See CIVIL PROCEDURE CODE (Act V of 1908), s. 50.

I. L. R. 39 Mad. 633

SPECIAL COURT.

When excludes jurisdiction of ordinary Courts. Before the jurisdiction of the ordinary Courts of the country can be excluded by a Special Court, there must be clear words in the statute excluding such jurisdiction. *SHAMU BHUVAN HAZRA v. BURESH CHANDRA AIT NAIR* (1915) 19 C. W. N. 636

SPECIAL TRIBUNAL.

See MADRAS CITY MUNICIPAL ACT (III of 1904)

I. L. R. 33 Mad. 41

SPECIFIC PERFORMANCE.

See CIVIL PROCEDURE CODE (Act V of 1908), O. 11, r. 2.

I. L. R. 39 Mad. 693

suit for—

See HINDU LAW—MARRIAGE.

I. L. R. 33 Mad. 1157

SPECIFIC RELIEF ACT (I OF 1877).

s. 9

1. ———— *Alien, status of—If tenant or labourer—Provisions as to Alien, of power of making a Special Procedure Code (Act V of 1904), s. 113. Very largely an alien was a tenant and in the absence of proof that an "alien" in that part of the country was a labourer, the decision of the lower Court protecting his possession under s. 9 of the Specific Relief Act was not one which the High Court would reverse under s. 113 of the Civil Procedure Code. *DEVI NATH DAS BHASKAR v. RAJ NARAYAN BHASKAR* (1915) 19 C. W. N. 1235*

2. ———— *Provisions, of remedies not precluded by contract. The words of s. 9 of the Specific Relief Act refer to exclusive possession and the Court in a case under that section has no jurisdiction to grant*

SPECIFIC RELIEF ACT (I OF 1877)—contd.**s. 9—concl'd.**

joint possession to the plaintiff. No order under this section can be made in favour of a plaintiff who claims an undivided share in the property from which he and his co-sharers have been ousted. *HARI NAMA DASS v. SHEIKH NAJU* (1912) 19 C. W. N. 120

3. ————— Joint ownership

—Co-owner, dispossessed by other co-owners, if may sue. Where a co-owner in physical possession of property jointly with other co-owners is dispossessed by the latter he can institute a suit for recovery under s. 9 of the Specific Relief Act. *Hari Narain Das v. Elemjan Bibi*, 19 C. L. J. 117 s. c. 19 C. W. N. 120, distinguished. *ATIMAN BIBI v. SHEIKH REASUT* (1915) 19 C. W. N. 1117

s. 15—

See **HINDU LAW—ALIENATION.**

I. L. R. 38 Mad. 1187

s. 22—Specific performance, suit for—
Sale not completed in time through vendor's non-performance of essential term within time assigned—
Vendor, if may sell property to another after expiry of time—Delay—Hardship, brought on by vendor—
Subsequent purchaser with notice making improvements, if entitled to compensation. Where a vendor agreed to satisfy the purchaser within a specified time that "she had a valid saleable interest in the property, by shewing a copy of the order of the Collector about the registration of her name in respect of the property, the will of her mother and other papers relating thereto," but neither the will (which had been filed in Court for probate) nor a certified copy thereof was shewn, but the vendor produced a compromise petition between the parties to the probate proceeding: *Held*, in the circumstances of the case, that it was impossible to hold that the production of the will was a non-essential term of the agreement, and non-completion of the sale was not due to the default of the purchaser who had refused to accept the compromise petition in lieu of the will or a certified copy thereof. Where property which had been agreed to be sold to plaintiff was sold to defendant on 30th August, the conveyance being registered on the following day, and the plaintiff sued for specific performance on the 5th November on the re-opening of the Civil Courts which was closed for the Puja holidays from 2nd October to 3rd November: *Held*, there was not such a delay in instituting the suit as would justify the Court in refusing specific performance. Specific performance will be refused against a vendor on the ground of hardship as contemplated in s. 22(2) of the Specific Relief Act, where the vendor has entered into the contract without full knowledge of the circumstances. Where a transferee of property buys with notice of a prior agreement to sell it to another and makes improvements in the property without inquiry of the latter: *Held*, that in a suit by the latter for specific performance, he was not entitled to be reimbursed for the costs of the

SPECIFIC RELIEF ACT (I OF 1877)—contd.**s. 22—concl'd.**

improvements. *HARADHONE DEBNATH v. BHAGABATI DAS* (1914) 19 C. W. N. 89

s. 38—

See **BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862), s. 3.**

I. L. R. 39 Bom. 358

s. 39—Evidence Act (I of 1872), s. 52—Civil Procedure Code (Act V of 1908), s. 100, Order VI, Rule 6—Suit to set aside a sale-deed—Specific allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion held probable on other circumstances and doubts—Finding not secundum allegata et probata—Substantial error in procedure—Ground for setting aside what might otherwise be a conclusion of fact. Plaintiff sued the defendant to set aside a sale-deed on the ground of coercion of a particular kind under s. 39 of the Specific Relief Act (I of 1877). Both the lower Courts disbelieved the allegations of coercion made in the plaint, but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant's *mandap* (open shed) and there through fear of possible violence made to sign the document. On second appeal by the defendant: *Held*, reversing the decree and dismissing the suit, that a suspicion of some kind or other undefined coercion was not sufficient to support the plea of coercion, the plea being not *secundum allegata et probata*. *Motee Lal Opudhiya v. Juggurnath Gurg*, 5 W. R. P. C. 25, *Eshenchunder Singh v. Shamachurn Bhutto*, 11 Moo. I. A. 7, and *Balaji v. Gangadhar*, I. L. R. 32 Bom. 255, referred to. *Per* Hayward, J. Where fraud or coercion are alleged, detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts. Where particulars of coercion alleged are wholly rejected and evidence disbelieved, and a vague and different kind of coercion is held to have been probable on other circumstances and doubts, there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law. *Per* Beaman, J. A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief. When a finding is absolutely unsupported by any evidence at all, that is a ground for setting aside what might otherwise be a conclusion of fact. When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all, proved, and so substituted the latter for the former, there is a substantial error in procedure under s. 100 of the Civil Procedure Code (Act V of 1908):

SPECIFIC RELIEF ACT (I OF 1877)—*contd*— s. 39—*contd***PURUSHOTTAM DAMI v PANDURANG CHINTAMAN (1914)** I. L. R. 39 Bom 149

— s. 42—

See CIVIL PROCEDURE CODE (1908), s. 9

I. L. R. 37 All 313

See CIVIL PROCEDURE CODE (Act V of 1908), O II, R. 2.

I. L. R. 38 Mad 1162

1 ————— *Declaratory suit*
under, if maintainable where property not in possession of defendants and plaintiff cannot ask for ejectment Where the property is not in possession of the defendants and the plaintiff cannot ask for ejectment as against them, a declaratory suit is maintainable under s. 42 of the Specific Relief Act. *Subramaniya v Paramaswaran*, I. L. R. 11 Mad 116 and *Malayya v Perumal*, 21 Mad L J 1022 followed. *RAMESWAR MONDAL v PROVABATI DEBI* (1914)

19 C W N 313

2 ————— *Suit for declaration of title—Property involved in possession of Court of Wards for person entitled thereto—Parties to suit.* On the death of a *mahant*, the right of succession to whose *math* was disputed, the Court of Wards took possession of the *math* and declined

was not a necessary party and (ii) that this did not offend against the provisions of s. 42 of the Specific Relief Act. *Goswami Ranchor Lalji v Sri Girdharyji*, I. L. R. 20 All 120, distinguished. *JAGANNATH GIR v TIRGUNA NANN* (1915) I. L. R. 37 All 185

STAMP

See STAMP ACT (II OF 1899)

STAMP ACT (II OF 1899)

— s. 2, cl (5) (b), s. 35 (a)—*Shahajoyi hundi, insufficiently stamped, admissibility in evidence—Payment of penalty* The plaintiff sued for recovery of money due on five instruments described as *hundis*. The documents bore an impressed stamp of 4 annas each, were each of them attested by a witness and the money secured thereby was made payable to the respectable holder. *Held*, that the documents in question were neither bills of exchange nor promissory notes but bonds within the meaning of s. 2 cl (5) (b) of the Indian Stamp Act, and were admissible in evidence on payment of duty and penalty under s. 35 (a) of the Indian Stamp Act. *KESARI CHAND SCRANA v ASHARAM MAHATO* (1915) 19 C W. N. 1326

— s. 2 (17) and Arts 40 and 64—*Mortgage deed—Hypothecation, letter of, accompanying a bill of exchange* Where a document ran as follows—
 ‘The executant being desirous of carrying on her deceased husband a business of which she is now

STAMP ACT (II OF 1899)—*contd*— s. 2—*contd*

the owner declares a trust in favour of the Bank of Madras in respect of machinery, plant, fixture and furniture and stock in trade in consideration of advances of money to be made by the Bank from time to time not exceeding in all Rs. 4,50,000 for the purpose of financing the business. All such advances carry interest at the rate of 6 per cent per annum. The trustee has got full power to use employ, sell or exchange or otherwise deal with the trust property in the ordinary course of business but should make good the property that may be sold with other goods of a similar nature and value. Any goods so substituted shall be included in the security. The trustee may retain in his hands the sum of Rs. 20,000 annually in trust to pay and apply the same in payment of sums advanced by the Bank. *Held* that the document created a trust in express language in respect of the machinery etc., in or upon the business premises of the firm and that the object of the instrument was to give the Bank some rights by way of security and it was a mortgage deed for the purpose of the Stamp Act. Reference under Stamp Act, s. 48, I. L. R. 11 Mad 216 referred to. *Semble* The document is not a letter of hypothecation within the meaning of the exemption in article 40. *Obiter* A fiscal enactment should be construed strictly and in favour of the subject. THE SECRETARY TO THE COMMISSIONER OF SALT, ABHARI AND SEPARATE REVENUE, REVENUE BOARD, MADRAS v MRS. ORR (1913) I. L. R. 38 Mad 648

1 ————— s. 4—*Stamp—Settlement of family property effected by two deeds, one modifying the other—Full duty paid on the first.* Two brothers, having come to an agreement as to the settlement of their joint property, embodied this agreement in a deed which was duly stamped according to the value of the property dealt with thereby. Subsequently the parties to this deed executed a second deed of settlement which modified provisions of the first in certain directions, but dealt with no property which was not covered by that deed. Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events. *Held*, that the transaction effected by two deeds fell within the purview s. 4 of the Indian Stamp Act 1899, and, the full duty having been paid on the first deed, the second required a stamp of one rupee only. *STAMP REFERENCE BY THE BOARD OF REVENUE* (1914) I. L. R. 37 All 159

2 ————— *Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another.* Two brothers executed deeds each in favour of the other. One was a deed of gift of all the property of the executant, and it was stamped to its full value. The other was a deed coming within no known category, but is provided for the expenses during the life-time of the executant of the deed of gift and hypothecated certain

SPECIFIC RELIEF ACT (I OF 1877)—contd.**s. 9—concl'd.**

joint possession to the plaintiff. No order under this section can be made in favour of a plaintiff who claims an undivided share in the property from which he and his co-sharers have been ousted. *HARI NAMA DASS v. SHEIKH NAJU* (1912) 19 C. W. N. 120

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s. 15—

See **HINDU LAW—ALIENATION.**

I. L. R. 38 Mad. 1187

s. 22—Specific performance, suit for—Sale not completed in time through vendor's non-performance of essential term within time assigned—Vendor, if may sell property to another after expiry of time—Delay—Hardship, brought on by vendor—Subsequent purchaser with notice making improvements, if entitled to compensation. Where a vendor agreed to satisfy the purchaser within a specified time that "she had a valid saleable interest in the property, by shewing a copy of the order of the Collector about the registration of her name in respect of the property, the will of her mother and other papers relating thereto," but neither the will (which had been filed in Court for probate) nor a certified copy thereof was shewn, but the vendor produced a compromise petition between the parties to the probate proceeding: *Held*, in the circumstances of the case, that it was impossible to hold that the production of the will was a non-essential term of the agreement, and non-completion of the sale was not due to the default of the purchaser who had refused to accept the compromise petition in lieu of the will or a certified copy thereof. Where property which had been agreed to be sold to plaintiff was sold to defendant on 30th August, the conveyance being registered on the following day, and the plaintiff sued for specific performance on the 5th November on the re-opening of the Civil Courts which was closed for the Puja holidays from 2nd October to 3rd November: *Held*, there was not such a delay in instituting the suit as would justify the Court in refusing specific performance. Specific performance will be refused against a vendor on the ground of hardship contemplated in s. 22(2) of the Specific Relief Act, where the vendor has entered into the contract without full knowledge of the circumstances. Where a transferee of property buys with notice of a prior agreement to sell it to another and makes improvements in the property without inquiry of the latter: *Held*, that in a suit by the latter for specific performance, he was not entitled to be reimbursed for the costs of the

SPECIFIC RELIEF ACT (I OF 1877)—contd.**s. 22—concl'd.**

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s. 38—

See **BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862), s. 3.**

I. L. R. 39 Bom. 353

s. 39—Evidence Act (I of 1872), s. 52—Civil Procedure Code (Act V of 1908), s. 100, Order VI, Rule 6—Suit to set aside a sale-deed—Specific allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion held probable on other circumstances and doubts—Finding not *secundum allegata et probata*—Substantial error in procedure—Ground for setting aside what might otherwise be a conclusion of fact. Plaintiff sued the defendant to set aside a sale-deed on the ground of coercion of a particular kind under s. 39 of the Specific Relief Act (I of 1877). Both the lower Courts disbelieved the allegations of coercion made in the plaint, but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant's *mandap* (open shed) and there through fear of possible violence made to sign the document. On second appeal by the defendant: *Held*, reversing the decree and dismissing the suit, that a suspicion of some kind or other undefined coercion was not sufficient to support the plea of coercion, the plea being not *secundum allegata et probata*. *Notee Lall Opudhiya v. Juggurnath Gurg*, 5 W. R. P. C. 25, *Eshenchunder Singh v. Shamachurn Bhutto*, 11 Moo. I. A. 7, and *Balaji v. Gangadhar*, I. L. R. 32 Bom. 255, referred to. *Per* Hayward, J. Where fraud or coercion are alleged, detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts. Where particulars of coercion alleged are wholly rejected and evidence disbelieved, and a vague and different kind of coercion is held to have been probable on other circumstances and doubts, there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law. *Per* Beaman, J. A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief. When a finding is absolutely unsupported by any evidence at all, that is a ground for setting aside what might otherwise be a conclusion of fact. When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all, proved, and so substituted the latter for the former, there is a substantial error in procedure under s. 100 of the Civil Procedure Code (Act V of 1909).

SPECIFIC RELIEF ACT (I OF 1877)—*concl'd.*— s. 39—*concl'd.*

PURUSHOTTAM DAJI v. PANDURANG CHINTAMAN
(1914) I. L. R. 39 Bom. 149

— s. 42—

See CIVIL PROCEDURE CODE (1908), s. 9.
I. L. R. 37 All. 313

See CIVIL PROCEDURE CODE (ACT V
OF 1908), O. II, R. 2.

I. L. R. 38 Mad. 1162

1. ——— *Declaratory suit under, if maintainable where property not in possession of defendants and plaintiff cannot ask for ejectment.* Where the property is not in possession of the defendants and the plaintiff cannot ask for ejectment as against them, a declaratory suit is maintainable under s. 42 of the Specific Relief Act. *Subramaniya v. Paramaswaran*, I. L. R. 11 Mad. 116, and *Malayya v. Perumal*, 21 Mad. L. J. 1022, followed. *RAMESWAR MONDAL v. PROVABATI DEBI* (1914)

19 C. W. N. 313

2. ——— *Suit for declaration of title—Property involved in possession of Court of Wards for person entitled thereto—Parties to suit.* On the death of a mahant, the right of succession to whose math was disputed, the Court

by a claimant thereto, (i) that the Court of Wards was not a necessary party, and (ii) that this did not offend against the provisions of s. 42 of the Specific Relief Act. *Gowram Ranchor Lalji v. Sri Girdhary*, I. L. R. 20 All. 120, distinguished. *JAGANNATH GIRI v. TIRGUNA NAND* (1915) I. L. R. 37 All. 185

STAMP.

See STAMP ACT (II OF 1899).

STAMP ACT (II OF 1899).

— s. 2, cl. (5) (b), s. 35 (a)—*Shahajogi hundi, insufficiently stamped, admissibility in evidence—Payment of penalty.* The plaintiff sued for recovery of money due on five instruments described

that the documents in question were neither bills of exchange nor promissory notes but bonds within the meaning of s. 2 cl. (5) (b), of the Indian Stamp Act, and were admissible in evidence on payment of duty and penalty under s. 35 (a) of the Indian Stamp Act. *KESHARI CHAND SURANA v. ASHARAM MAHATO* (1915) 19 C. W. N. 1326

— s. 2 (17) and Arts. 40 and 64—*Mortgage-deed—Hypothecation, letter of, accompanying a bill of exchange.* Where a document ran as follows—
"The executant being desirous of carrying on her deceased husband's business of which she is now

STAMP ACT (II OF 1899)—*cont'd*— s. 2—*concl'd*

advances of money to be made by the Bank from time to time not exceeding in all Rs 4,50,000 for the purpose of financing the business. All such advances carry interest at the rate of 6 per cent. per annum. The trustee has got full power to use, employ, sell or exchange or otherwise deal with the trust property in the ordinary course of business but should make good the property that may be sold with other goods of a similar nature and value, any goods so substituted shall be included in the security. The trustee may retain in his hands the sum of Rs 20,000 annually in trust to pay and apply the same in payment of sums advanced by the Bank." *Held*, that the document created a trust in express language in respect of the machinery, etc., in or upon the business premises of the firm and that the object of the instrument was to give the Bank some rights by way of security and it was a mortgage-deed for the purpose of the Stamp Act. Reference under Stamp Act, s. 46, I. L. R. 11 Mad. 216, referred to. *Semble* The document is not a letter of hypothecation within the meaning of the exemption in article 40. *Obiter* A fiscal enactment should be construed strictly and in favour of the subject. *THE SECRETARY TO THE COMMISSIONER OF SALT, ARBARI AND SEPARATE REVENUE, REVENUE BOARD, MADRAS v. MRS ORR* (1913) I. L. R. 38 Mad. 646

1 ——— s. 4—*Stamp—Settlement of family property effected by two deeds, one modifying the other—Full duty paid on the first* Two brothers, having come to an agreement as to the settlement of their joint property, embodied this agreement in a deed which was duly stamped according to the value of the property dealt with thereby. Subsequently the parties to this deed executed a second deed of settlement which modified provisions of the first in a certain directions, but dealt with no property which was not covered by that deed. Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events. *Held*, that the transaction effected by two deeds fell within the purview s. 4 of the Indian Stamp Act, 1899, and, the full duty having been paid on the first deed, the second required a stamp of one rupee only. *STAMP REFERENCE BY THE BOARD OF REVENUE* (1914)

I. L. R. 37 All. 159

2 ——— *Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another.* Two brothers executed deeds each in favour of the other. One was a deed of gift of all

of the deed of gift and hypothecated certain

STAMP ACT (II OF 1899)—*concl'd.*s. 4—*concl'd.*

property to secure the payment thereof; only a portion of the property thus hypothecated, however, was included in the deed of gift. The second document bore a stamp of Rs. 10. *Held*, that the two documents were part of the same transaction and amounted to a settlement within the meaning of s. 4 of the Stamp Act, and the stamp duty paid was sufficient. STAMP REFERENCE BY THE BOARD OF REVENUE (1915)

I. L. R. 37 All. 264

s. 57—Reference under Art. 5, Sch. I—Agreement or memorandum of agreement, meaning of—Proposal or offer in writing—Parol acceptance—Whether proposal or offer in writing requires to be stamped—Advance of loan or written declaration by a party as to his property—Entry in register of the declaration—Whether stamp necessary. Where it appeared on the evidence as to course of business of a bank, that the bank advanced loans on promissory notes payable on demand or otherwise, but before advancing money, it required the borrower to make a declaration in the confidential register in the form thereto annexed as to the property in his possession and to sign the same: *Held*, that the entry of the declaration in the register was not an agreement or a memorandum of an agreement which required to be stamped under Art. 5 of the sch. I of the Indian Stamp Act (II of 1899). Assuming that on the signing of the declaration there was "a proposal" or an "offer," a written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing. *Carlill v. The Carbolic Smoke Ball Company*, [1892] 2 Q. B. 484, *Chaplin v. Clarke*, 4 Ex. Rep. 403 and *Clay v. Crafts*, 20 L. J., C. L., 361, followed. *Quare*: Whether the entry in the register amounted to a proposal or offer in writing. SECRETARY TO THE COMMISSIONER OF SALT, AKBARI AND SEPARATE REVENUE, v. THE SOUTH INDIAN BANK, LD., TINNEVELLY (1913)

I. L. R. 38 Mad. 349

s. 57 (b)—Reference by Board of Revenue—Document to which reference relates not in existence. *Held*, that ss. 56 and 57 of the Indian Stamp Act empower the High Court to decide questions relating to instrument already in existence and which have been made the subject of action by the Collector acting under ss. 31, 40 and 41 of the Act. They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter. STAMP REFERENCE BY THE BOARD OF REVENUE (1914)

I. L. R. 37 All. 125

s. 59, Sch. I, Art. 35, cl. (a), sub-cl. (iii)—Lease—Lessee agreeing to pay annual rent plus Government assessment—Whether rent include assessment for purposes of stamp duty. A piece of land was leased for five years whereby the lessee agreed to pay to the lessor Rs. 100 as rent plus Rs. 16-8-0 on account of Government assess-

STAMP ACT (II OF 1899)—*concl'd.*s. 59—*concl'd.*

ment. The question being referred whether the stamp duty should be levied on Rs. 100 or Rs. 116-8-0, the total amount of rent and Government assessment. *Held*, that the Government assessment did not form part of the profit and therefore the stamp duty was leviable only on Rs. 100 the annual rent, under Sch. I, Art. 35, cl. (a), sub-cl. (iii) of Stamp Act. GANGARAM NARAYANDAS TELI, *In re* (1915)

I. L. R. 39 Bom. 434

Sch. I, Art. 48—

See ATTORNEY. I. L. R. 38 Mad. 134

STANDING COMMITTEE.

See MADRAS CITY MUNICIPAL ACT (III OF 1904) . I. L. R. 38 Mad. 41

STATUTE LAW IN ENGLAND.

apportionment under—

See LESSOR AND LESSEE.

I. L. R. 38 Mad. 86

STATUTES.

See LIMITATION. I. L. R. 38 Mad. 101

STATUTES, CONSTRUCTION OF.

See CONSTRUCTION OF STATUTES.

The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts. *Kurri Veerareddi v. Kurri Bapireddi*, I. L. R. 29 Mad. 336, followed. *TIMANGOWDA v. BENEPGOWDA* (1915) . I. L. R. 39 Bom. 472

STAY OF EXECUTION.

See PRIVY COUNCIL, PRACTICE OF.

I. L. R. 42 Cal. 739

STAY OF SUIT.

See HIGH COURT'S ACT (24 & 25 VICT. C. 104), ss. 2, 9 AND 13.

I. L. R. 39 Bom. 604

STEP IN AID OF EXECUTION.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 179 . I. L. R. 38 Mad. 695

STREET.

right of municipality to—

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

STRIDHAN.

See HINDU LAW—HUSBAND AND WIFE. I. L. R. 38 Mad. 1036

SUB-DIVISIONAL MAGISTRATE.

powers of—

See CRIMINAL PROCEDURE CODE, SS. 106 AND 32 . I. L. R. 37 All. 236

SUB-LEASE.

by a fazendar—

See FAZENDARI TENURE.

I. L. R. 39 Bom. 316

SUBORDINATE JUDGE.

See MADRAS CIVIL COURTS ACT (III of 1873), s. 17.

I. L. R. 38 Mad. 531

SUBORDINATE OFFICERS.

acts of, how far binding on Government—

See MADRAS IRRIGATION CESS ACT (VII of 1865), s. 1.

I. L. R. 38 Mad. 997

SUBSTITUTION OF PARTIES.

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

SUCCESSION.

See AGRA TENANCY ACT II OF 1901, s. 24

I. L. R. 37 All. 9, 658

See BADUANA GRANT

I. L. R. 42 Calc. 582

See HINDU LAW—INHERITANCE

I. L. R. 37 All. 604

See HINDU LAW—SUCCESSION

See MATAPARS ACT (BOM. VI OF 1837), ss 9 AND 10.

I. L. R. 39 Bom. 478

See SUCCESSION ACT.

SUCCESSION ACT (X OF 1865).

s. 50—

1. ———— *Attestation, if must be as to same fact, e.g., execution or acknowledgment—Execution—Guiding the hand of executant in fixing mark* It is not necessary that each of the attesting witnesses to a will should prove the same facts. One witness who saw the testator sign the will and another before whom the execution of the will was only acknowledged by the testator may both be good attesting witnesses to the same will. Where, on the evidence, it appeared that a will had been drawn up in accordance with the wishes of the testatrix as expressed during her lifetime before reliable witnesses, that it was read over to her when she was in possession of her senses, and then being asked by one S, whether he would sign the will for her, nodded her assent, whereupon S guided her finger to make the mark, and then put down the testatrix's name under the mark by his own pen, *Held*, that the will was executed by the testatrix as required by s 50 of the Succession Act. That as the execution of the will was complete the moment the mark was made, S became an attesting witness when he wrote his own name after the testatrix's. *MURTHANATH ROY CHoudhury v. JITENDRA NATH ROY CHoudhury* (1915) 19 C. W. N. 1295

SUCCESSION ACT (X OF 1865)—*contd*s. 50—*contd*

Execution of

ing witnesses to be present at the same time the English system of executing the document at the foot does not usually obtain amongst Indians.

attest. Where in a will written on four sheets of paper the signature of the executant appeared at the top left-hand corner of the first page as being made by his own pen, but his signature only with all the signatures of the other three pages appeared the signatures of two of these four persons. *Held*, that the operative signature was the one on the first page and as on the evidence it appeared that at least two of the witnesses whose names appeared on that page subscribed their names *animo attestandi*, the will was properly executed as required by s 50 of the Succession Act. Where the testator after having executed the will in the presence of one attesting witness took it successively to the houses of two other attesting witnesses who on his acknowledgment of his signature attested the document. *Held*, that there was valid attestation by all three witnesses within s 50 of the Succession Act. *SABITRI THAKURIAN v. F. A. SARTI* (1915) 19 C. W. N. 1297

s. 57—

See HINDU LAW—WILL—

I. L. R. 38 Mad. 369

s. 91—

See INDIAN SUCCESSION ACT (X OF 1865), s. 187.

I. L. R. 38 Mad. 474

s. 111—

See WILL. I. L. R. 39 Bom. 296

s. 187—

1. ———— *Scope of—Es. tablishment without probate of legatee's right—s 91—Legacy, vesting of—Executor's assent—Acceptance by legatee, necessity of—Disclaimer by legatee.* Where on appeal in a partition suit it to a legacy by legatee himself or some person

SUCCESSION ACT (X OF 1885)—concl'd.

— s. 187—concl'd.

claiming under him, but also debar a person who desired to establish the legatee's right merely as a *jux tertii* for the purpose of his defence. The estate vested in a legatee under s. 91 of the Act is not full or absolute; but it refers only to an interest in the legacy and not the legacy itself. Until the executor has given his assent to the legacy, the legatee has only an inchoate right to it. *Bachman v. Bachman*, 1 L. R. 6 All. 587, and *Poe v. Gay* 3, East 120; s. c., 102 E. R. 544, followed. A legacy vested in the legatee under s. 91 of the Act is divested by his disclaimer. The rule of English law that no legacy can vest in the legatee against his will, may legitimately be adopted in deciding questions under the Indian law. In *re Hodely Freke v. Calanday*, 32 Ch. 408, referred to. **LAKSHMAMMA v. RATNAMMA** (1913) I. L. R. 38 Mad. 474

2. ————— Conditional order of Judge for grant of Probate—Non-issue of Probate giving to non-payment of Court fees—Heir of legatee, same as legatee—Probate or Letters of Administration alone, evidence of right under s. 187. A Hindu executing a will in the town of Madras made a bequest in favour of his son. After the death of the father, the son died leaving his mother, the plaintiff, as his heir. On the application of the executor (defendant) for a Probate the fiat of the Judge was obtained but there was no actual order for the issue of the Probate and the Probate was not issued owing to the failure of the executor to pay the requisite court fees for the same. In a suit by the testator's widow as mother of his deceased son for an order of the Court directing the defendant to apply for probate of the will and for of the estate: *Held*, (a) for the purposes of s. 187 of the Indian Succession Act, which governed the case, the plaintiff, though only an heir of a legatee, was in the position of a legatee, (b) that the fiat of the Judge for grant of Probate was only conditional and was not equivalent to an actual grant of the Probate within the meaning of s. 187 (c), that in the absence of a grant of Probate or Letters of Administration which was the only proof of right allowed by the section the plaintiff was debarred from claiming any rights flowing from the will and (d) that the mere production, proof and exhibition of the will as an ordinary exhibit in the case, were not equivalent to proof of the right by the production of the Probate or the Letters of Administration as required by the section. **Lakshamma v. Ratnamma**, I. L. R. 38 Mad. 474, followed. **Munagiram Maricari v. Gursahai Nand**, I. L. R. 17 Calc. 347, distinguished. **ALAMELANMAL v. SURYAPRAKASAROYA MUDALIAR** (1915) I. L. R. 38 Mad. 988

SUCCESSION CERTIFICATE.

See LIMITATION ACT (IX OF 1908),
SCH. I, ART. 62.

I. L. R. 37 All. 434

1. ————— Succession Certificate Act (VII of 1889), s. 4—"Debt." meaning

SUCCESSION CERTIFICATE—concl'd.

of—Part of debt, if certificate can be granted in respect of—Appeal. A certificate under the Succession Certificate Act can be granted in respect of a part only of a debt due to the deceased. The word "debt" is a comprehensive term, which should receive a liberal construction. *Re Ghan-sham Das*, (1893) All. W. N. 84, and *Mahomed Abdul Hossain v. Sarifan*, 16 C. W. N. 231, approved and followed. *Akbar Khan v. Bill-kisara Begam*, (1901) All. W. N. 125, considered. *Bibee Boodhun v. Jan Khan*, 13 W. R. 265, *Muham-med Ali Khan v. Paltan Bibi*, I. L. R. 19. All. 129, *Bismilla Begam v. Tawassul Husain*, I. L. R. 32 All. 335, and *Ghaffur Khan v. Kalandari Begam*, I. L. R. 33 All. 327, not followed. **ANNAPURNA DASEE v. NALINI MOHAN DAS** (1914)

I. L. R. 42 Calc. 10

2. ————— Suit dismissed for non-production of the certificate—Certificate, if may be filed in Appellate Court. See **MOORALIDHAR ROY CHOWDHURY v. MOHINI MOHAN KAR** (1915)

19 C. W. N. 794

SUCCESSION CERTIFICATE ACT (VII OF 1889).

— s. 4—

See SUCCESSION CERTIFICATE.

I. L. R. 42 Calc. 10

ss. 18, 27—Certificate granted by specially empowered Subordinate Judge, if may be revoked by District Judge otherwise than in appeal—Reg. V of 1799, jurisdiction under, nature of. The fact that no appeal has been preferred against an order of a Subordinate Judge (who has been invested with the powers of a District Court under the Succession Certificate Act) granting a certificate, is no bar to its revocation at any time when the circumstances enumerated in s. 18 of the Act are proved. The revocation must in such a case be ordinarily made by the Subordinate Judge when he is still exercising that jurisdiction in the district. The District Judge has in such circumstances no jurisdiction to make the revocation except where the case having been instituted and being pending before the Subordinate Judge has been withdrawn by the District Judge. The jurisdiction of the District Judge under Reg. V of 1799 is more administrative than judicial. He can act thereunder only when there is no claimant, and acting under that Regulation, he is bound to respect the order granting a certificate until the same was revoked by a competent authority. **SUKHIA BEWA v. SECRETARY OF STATE FOR INDIA** (1914)

19 C. W. N. 551

SUIT.

See FRAUD I. L. R. 37 All. 537

See GUARDIANS AND WARDS ACT (VIII OF 1890), ss. 12, 24, 25.

I. L. R. 37 All. 515

See PRE-EMPTION. I. L. R. 37 All. 529

See RES JUDICATA.

I. L. R. 37 All. 485

SUIT—concl'd.

by heir for recovery of her share—

See LIMITATION ACT (IX OF 1908),
SCH. I, ART. 62 I. L. R. 37 ALL. 434

by reversioner—

See HINDU LAW—WILL
I. L. R. 37 ALL. 422

by reversioner to set aside adoption—

See ADOPTION I. L. R. 37 ALL. 496

for declaration of title—

See SPECIFIC RELIEF ACT (I OF 1877),
s. 42 I. L. R. 37 ALL. 185

for money had and received—

See LIMITATION ACT (IX OF 1908), SCH.
I, ART. 62 I. L. R. 37 ALL. 40, 233

for possession of land—

See LIMITATION ACT (IX OF 1908), s. 28,
ART. 47 I. L. R. 38 MAD. 432

for rent under registered agreement—

See LIMITATION I. L. R. 38 MAD. 101

maintainability of—

See CIVIL PROCEDURE CODE (1908) s. 9
I. L. R. 37 ALL. 313

on lost bond—

See MORTGAGE I. L. R. 37 ALL. 428

to enforce payment of money
charged upon immoveable property—

See LIMITATION ACT (IX OF 1908), SCH.
I, ART. 132 I. L. R. 37 ALL. 400

to recover money deposited with
Bank—

See LIMITATION ACT (IX OF 1908), SCH.
I, ART. 60 I. L. R. 37 ALL. 232

withdrawal of—

See CIVIL PROCEDURE CODE (1908), O.
XXIII, s. 1 I. L. R. 37 ALL. 328

See PARTITION I. L. R. 37 ALL. 155

SUIT FOR LAND.

See JURISDICTION.
I. L. R. 42 CALC. 942

SUITS VALUATION ACT (VII OF 1887).

s. 8—

See JURISDICTION.
I. L. R. 38 MAD. 795

SUMMONS.

Service of summons—

Indian Marine Service—Civil Procedure Code
(Act V of 1908), O. V., rr. 15, 17 and 27—*Ex
parte* decree—Officer or mechanic in the employ of
the Indian Marine. Under the Civil Procedure
Code an officer or mechanic in the employ of the

SUMMONS—concl'd.

Indian Marine is subject to exactly the same
rules as any other person as regards service of
summons. They come within the operation of
rules 15 and 17 of Order V of the Code of Civil
Procedure. *INTU MEAN MISTRY v. DARBHANGH
BHUIYAN* (1914) . . . I. L. R. 42 CALC. 67

SUNDARBANS.

Lease from Government
of lands in—Permanent tenure granted by lease—
Condition that rent will not abate in case of dilution,
if valid—Onus of proof—Reg III of 1828, s. 13.
Where tenants took a permanent lease of lands
in the Sundarbans stipulating that "we shall not
object to the payment of rent on the ground of
drought, inundation, death, desertion, overflow
of salt water, diluviation by river, etc.": *Held*,
that it was for the tenants if they impeached
this stipulation as being inconsistent with the
provisions of s. 52 of the same Act.

made by Government. It is, therefore, erroneous
to hold that there could not be a permanent
tenure in the Sundarbans. That the stipulation
barred not only a plea of reduction of rent in
defence, but also a suit for abatement of rent.
KHETTRAMANI DAS v. JIBAN KRISHNA KUNDU
(1914) . . . 19 C. W. N. 546

SURETY.

See PROMISSORY NOTE.
I. L. R. 38 MAD. 680

discharge of—

See CONTRACT ACT (IX OF 1872), ss.
134, 137 . . . I. L. R. 39 BOM. 52

liability of—

See HINDU LAW—SECRATY DEBT.
I. L. R. 38 MAD. 1120

1. only their pass
Code (Act V of 1898), ss. 118, 122. Sureties
tendered by a party bound down under s. 118 of
the Criminal Procedure Code should not be rejected
on a police report as to their fitness but only after
a judicial enquiry under s. 122, and by the
Magistrate who has passed the order for security.
AKBAR ALI MAHOMED v. EMBEROS (1914) .
I. L. R. 42 CALC. 706

2. Bail bond—For
feiture on failure of accused to appear—Suit by
surety against third person upon promise to in-
demnify—Contract, legality of. A bail bond having
been forfeited owing to the failure of the accused
to appear, the surety sued a third person who
had agreed to indemnify the surety for recovery
of the amount forfeited: *Held*, that the

SURETY—concl'd.

contract to indemnify was illegal and could not be enforced. *PRASANNO KUMAR CHUCKERBUTTY v. PROKASH CH. DUTT* (1914) . 19 C. W. N. 329

SURRENDER OR ABANDONMENT.

----- of holding—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 80, ETC.

I. L. R. 38 Mad. 608

SURVEY ACT.

See BENGAL SURVEY ACT.

T**TAXATION.**

See COSTS I. L. R. 39 Bom. 383

TEMPLE.

See HINDU LAW ENDOWMENT.

I. L. R. 37 All. 298

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), s. 3.

I. L. R. 38 Mad. 1176

See TEMPLE COMMITTEE.

TEMPLE COMMITTEE.

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863). I. L. R. 38 Mad. 594

----- power of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), s. 3

I. L. R. 38 Mad. 1176

TEMPORARY INJUNCTION.

See INJUNCTION 19 C. W. N. 442

TENANCY.

----- determination of—

See LANDLORD AND TENANT.

I. L. R. 38 Mad. 710

TENANT.

----- holding over, suit to eject—

See JURISDICTION.

I. L. R. 38 Mad. 795

----- right of—

See MALABAR TENANTS' IMPROVEMENTS ACT (MADRAS I OF 1900), ss. 3, 5.

I. L. R. 38 Mad. 954

----- surrender by, of waste lands—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8. I. L. R. 38 Mad. 891

TENANT FOR A TERM.

See LIMITATION ACT (IX OF 1908), s. 8, SCH. I, ART. 47. I. L. R. 38 Mad. 432

TENANT FOR A TERM—concl'd.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8, EXCEP.

I. L. R. 38 Mad. 843

TENANT IN COMMON.

See HINDU LAW—JOINT FAMILY.

I. L. R. 38 Mad. 684

See POSSESSION I. L. R. 37 All. 208

TENDER.

----- by debtor—

See LIMITATION I. L. R. 38 Mad. 374

----- essentials of a valid—

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 54 AND 78, CL. (2).

I. L. R. 38 Mad. 629

----- methods of—

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 54 AND 78, CL. (2).

I. L. R. 38 Mad. 629

TENEMENTS.

----- severance of—

See EASEMENT. I. L. R. 38 Mad. 149

TENURE.

See JAIGIR I. L. R. 42 Calc. 305

TENURE OF LAND.

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), ss. 30, 35, 39, 40.

I. L. R. 39 Bom. 664

TESTATOR.

----- money belonging to, but not known to him—

See WILL. I. L. R. 38 Mad. 1096

THAK AND SURVEY MAPS.

----- Value of, as evidence of title and possession. Thak and survey maps may be presumed to have correctly delineated the boundaries of villages and thus to furnish valuable evidence of possession at the time they were made and consequently also of title. But such presumption fails where the maps were promptly challenged and found inaccurate. *MOHENDRA NATH BISWAS v. SHAMSUNNESSA KHATUN* (1914). 19 C. W. N. 1280

TIDAL RIVER.

See FISHERY I. L. R. 42 Calc. 489

TIMBER TREES.

----- appropriation of, by tenant—

See CUSTOM . 19 C. W. N. 1188.

TIME.

----- computation of—

See LEAVE TO APPEAL TO PRIVY COUNCIL. I. L. R. 42 Calc. 35

TITLE—concl'd

See MADRAS LAND ENCROACHMENTS ACT
(III of 1905)

I. L. R. 38 Mad. 674

See TRADE MARK

I. L. R. 42 Calc. 262

covenant for—

See SALE DEED I. L. R. 38 Mad. 1171

proof of—

See FISHERY I. L. R. 42 Calc. 469

question of—

See PUBLIC NUISANCE

I. L. R. 42 Calc. 158

TORT.

See MARRIAGE, CONTRACT OF

I. L. R. 39 Bom. 1682

TRADE-MARK.

meaning of—

See PENAL CODE, s. 478

19 C. W. N. 957

1. Trade mark in selection of natural products as indicating quality—Goodwill—License to use trade mark—
see estopped
Evidence Act

In India the law of trade marks is not governed by statute, there being no statutory system of registration. Rights and liabilities in connection with trade marks are determined by reference to the principles of the common law of England. *British American Tobacco Co., Ltd. v. Mahboob Buleh*, I. L. R. 38 Calc. 110, referred to. A trade mark cannot be transferred or descend in gross, but only together with the goodwill of the business represented attached or as representation.

By usage, successors in business may use their predecessors' trade marks where the representation still continues to be substantially true. A selector of natural products like jute may have a trade mark in connection

Margarine, Ltd., [1901] A. C. 217, referred to. In a suit for royalty, brought by the licensors of certain jute trade marks against the licensees, the defence taken was that the plaintiffs had no title to the marks in question, and that the license was void. *Held*, that by virtue of s. 117 of the Evidence Act the licensees were estopped from questioning their licensors' title or the validity of the license. At any rate s. 117 cast on the defendants the burden of proving that the goodwill of the business had not passed to the plaintiffs to support the transfer of the trade marks, and the defendants having failed to do so the plaintiffs were entitled to the royalty claimed. Claim to damages by the licensors for depreciation in the

TRADE-MARK—concl'd

value of the trade marks due to the default of the licensees, refused on the facts of the case. *The Decision of IMAM J in Jagannath & Co. v. Cresswell* I. L. R. 40 Calc. 814, affirmed. *HANNAH & JUGGERNATH & Co* (1914)

I. L. R. 42 Calc. 262

2. Infringement, action for—Advertisement and circular—Cause of action—Jurisdiction of Court where advertisement is
" " " "

plaintiff alleged that 'Sudha Sindhu' was his registered trade mark and he brought this suit for an injunction and for damages in the Court of the Subordinate Judge of Muttra. *Held*, that a trade mark could be infringed by means of advertisement and as the cause of action arose partly at Muttra, the courts there had jurisdiction to entertain the suit. *Jay v. Ladler*, I. L. R. 40 Ch. D. 649, *Bourne v. Swan and Edgar, Limited*, I. L. R. 1 Ch. 211, *Frank Reddaway v. George Banlam*, [1896] A. C. 199, referred to. *KHESHTRA PAL SHARMA & PANCHAM SINGH VARMA* (1915)

I. L. R. 37 All. 448

TRADING WITH THE ENEMY.

Acts done and directions given before date of the Ordinance, relevancy of—Subsequent ratification—Trading—meaning of—Directions to an agent to take delivery of goods lying in London, and to sell to German firm against payment—Supply of goods to agent and sale by him to German firm—Destined—meaning of—Legal and

nance (VI of 1914), s. 3—*Trading with the Enemy Proclamation No. 2* (15 (7)), (19)—*Royal Proclamation of 15th October 1914—Criminal Procedure Code* (Act V of 1898), s. 423. Where a case of mica was shipped by the accused to a German firm before the war but arrived in London after its outbreak and was taken up by an English firm, whereupon he wrote, before the date of the Ordinance VI of 1914, viz., 14th October 1914, to a

firm refused to do so by reason of the prohibition of the export of mica to Italy by Royal Proclamation, and further wrote to the agent to apply

TRADING WITH THE ENEMY—concl'd.

to the English firm for the mica, and to deliver it to a German purchaser against payment, and where, after the date of the Ordinance, the accused again wrote to his agent informing him of his aforesaid letters and instructions to the Bank and the English firm, and directing the agent to apply for the case of mica to the latter and to deliver it to the German purchaser against payment, which directions were not in fact carried out on account of the refusal by the English firm to export the mica to Italy :—*Held*, that, as the Ordinance was not retrospective, the only acts and directions which the Court could take into consideration, to establish the offence of trading with the enemy, were such as were done or given after the date of its enactment, unless the previous acts and directions were ratified thereby. *Quære*: Whether mere directions to an agent to apply for goods in the possession of a third person, and to deliver the same to an enemy against payment amount to "trading" within the meaning of the Trading with the Enemy Proclamation No. 2, cl. 5 (7). The word "destined" when used with the term "trading," in the same sub-clause, means "intended for" and not "on the way to." *Legal* destination must not be confused with *actual* destination. The Court must determine whether the goods were actually destined for an enemy and with reference only to acts done and directions given after the date of the Ordinance VI of 1914. If the English firm had really purchased the goods outright, they were not in existence, so far as any disposition of them by the accused was concerned, after the date they were taken up and paid for, and could not be destined for an enemy. But assuming that the said firm had merely taken over the goods on behalf of the accused and subject to his further instructions, a direction to the agent to apply for and deliver them to a German purchaser against payment was insufficient to give the goods an enemy destination in fact, as such direction had no operation on receipt thereof by reason of the refusal of the English firm to export the goods to the agent at Genoa. *Held*, also, that, as the point was not free from doubt, the accused was entitled to the benefit of it. It is not a universal rule that in no case can an Appellate Court convict an accused of abetment, when he was charged only with the principal offence. But it is discretionary with the Appellate Court to allow such fresh charge being tried on appeal. The Court refused, under the circumstances of the case, to alter the conviction to one of abetment of supply to, or of trading by, the agent. Where the agent of the accused sold and delivered some cases of mica, and handed over the shipping documents for certain other cases lying in London, to a German firm or its agent in Genoa :—*Held*, *per* BEACHCROFT AND GREAVES JJ., that the accused was guilty of the offence of supplying goods to the enemy within cl. 5 (7) of the Trading with the Enemy Ordinance No. 2. *INDAR CHAND v. EMPEROR* (1915)

I. L. R. 42 Calc. 1094

TRADING WITH THE ENEMY PROCLAMATION NO. 2.

— Cls. (7), (9).—

See TRADING WITH THE ENEMY.

I. L. R. 42 Calc. 1094

TRANSFER.*See* CIVIL PROCEDURE CODE (ACT V OF 1908) s. 24. I. L. R. 38 Mad. 25*See* CRIMINAL PROCEDURE CODE, ss. 110 AND 526. I. L. R. 37 All. 20*See* CRIMINAL PROCEDURE CODE, s. 193 I. L. R. 37 All. 286*See* SANCTION FOR PROSECUTION.

I. L. R. 42 Calc. 667

— by mortgagee—

See MORTGAGE BY MINOR.

I. L. R. 38 Mad. 1071

— oral—

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 118 TO 120, 54 AND 55, CL. 6 (b).

I. L. R. 38 Mad. 519

Transfer by District Judge of particular case to Additional Judge—Civil Courts Act (XII of 1887), ss. 8, sub-s. (2), 22, sub-s. (2)—Probate and Administration Act (V of 1881), ss. 51, 53. It is competent to a District Judge to transfer a particular case to an Additional Judge under the provisions of sub-s. (2) of s. 8 of the Civil Courts Act of 1887. RUP KISHORE LAL v. NEMAN BIBI (1915) I. L. R. 42 Calc. 842

TRANSFER OF PROPERTY ACT (IV OF 1882).

— ss. 2, cl. (c), 116—*Ijaradar for a term, sub-lease for residential purposes granted by, before 1882—Holding over and acceptance of rent by next such ijaradar, effect of—Transfer of Property Act, effect of, on such tenancy—S. 2, cl. (c), s. 116, conditions necessary for the application of—Notice required to terminate such tenancy.* The defendant was brought upon the land as a tenant under a verbal lease before the Transfer of Property Act came into force by an *ijaradar* of the land, who held for a limited term which expired after the Transfer of Property Act had come into operation. The tenancy was created for residential purposes. The defendant continued in occupation of the land and was treated as tenant by the next *ijaradar* who accepted rent from the defendant. The landlord, the lessor of the *ijaradar*, never accepted rent from her. *Held*, (in a suit for ejectment of the defendant), that in order to entitle the defendant to avail herself of the benefit of cl. (c) of s. 2 of the Transfer of Property Act it is necessary for her to establish that her right as it exists at present arose out of a legal relation constituted before the Transfer of Property Act came into force; in other words, that the tenancy created by the first *ijaradar* continued in operation even after the termination of the first *ijara*. That the tenancy of the defendant came to amend when the *ijara* during which it was created

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*s. 2—*contd*

expired, and the true effect of the acquiescence by the second *jaradar* in the continuance of the possession by the defendant and the acceptance of rent from her was to create in her a new tenancy and the provisions of cl. (c) of s. 2 of the Transfer of Property Act were consequently of no avail to the defendant. That in order to come

tion of the *vara* granted to her lessor, had to establish that the lessor or his legal representative

ease from month to month terminable by fifteen days' notice expiring with the end of a month of the tenancy. *DURGI NIKARINI v GOORBOHEAN BOST* (1914). 19 C. W. N. 525

s. 4—

See DAMDUPAT, RULE OF
I. L. R. 42 Calc. 826

ss. 4 and 54—Unregistered sale deed for and of less than Rs 100 in value, invalidity of, when no previous oral sale—Evidence, inadmissibility of, to prove adverse possession—Possession change of, in cases of oral sale, how to be effected—Sale of tangible immovable property of the value of less than Rs 100 effected by an unregistered instrument (without any prior oral sale) followed by delivery of possession is invalid and operative to pass the title to the property under section 54, Transfer of Property Act (IV of 1882). A document which affects immovable property, and which is required by law to be registered is, if it is not registered, inadmissible in evidence to prove the nature of possession of the person claiming under it, such as, the adverse character of the possession. *Per CURRAM*. If an oral sale is made of immovable property of the value of less than Rs 100 to a person already in possession of the property it is sufficient to pass title if the vendor converts by appropriate declarations or acts the previous possession into a possession as vendee and it is not necessary that to satisfy the section 4 of the Transfer of Property Act, the person in possession should give it up formally and take it afterwards as vendee. *Sibendrapada Banerjee v. Secretary of State for India*, I. L. R. 34 Calc. 207, not followed. *MUTRUKARUPAN v. MUTRUK* (1914). I. L. R. 38 Mad. 1158

s. 6 (a)—Hindu temple, offerings to—Pujari's right to a share if alienable—Eschept—

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*s. 6—*contd*

be transferred. Such a transfer being prohibited by statute the transferor is not estopped from questioning its validity. *Per Sharfuddin, J.* The right of the *pujari* of a Hindu temple to take a share of the offerings is a *res extra commercium*. *PUNCHA THAKUR v. BINDESHRI THAKUR* (1915). 19 C. W. N. 580

s. 6 (c)—

1. Right to sue, assignment of—Tort—Assignment of claim founded on, validity of—Damages for negligence of agent, assignment of claim for. A mere right to recover damages for the negligence of an agent in failing to collect rents cannot be transferred. Such a

on tort, it is not assignable. *Dawson v Great Northern and City Railway*, [1905] 1 KB 260, and *Defrica v Milne*, [1913] 1 Ch 98, referred to. Held, also, that the claim if founded on contract was unassignable in law being transferred after breach. *Abu Mahomed v S C Chunder*, I. L. R. 36 Calc. 346, applied. *Shwam Chand Koonoo*

L. R. Kanj. Dawa- 1905] 1 RAMA-
CHANDRA RAJU (1913). I. L. R. 38 Mad. 138

2. Transfer of right to past mesne profits, illegality of. A transfer of a claim for past mesne profits is invalid under clause (c) of section 6 of the Transfer of Property Act (IV of 1882). *Varahaswami v Ramachandra Raju*, 24 Mad. L. J. 298, followed. *King v. Victoria Insurance Company*, [1896] A. C. 250, distinguished. *SREETANMA v VENKATARAMANAYYA* (1913). I. L. R. 38 Mad. 308

s. 10—Hindu Law—Grant, deed of, for maintenance and other expenses—Grant by zamindar to his wife and minor son—Estate of grantors—Restraint on alienation—Lease for fifteen years by mother as guardian, if void, or voidable by minor—Reputation by zamindar as natural guardian, mere act of, if sufficient—Suit to set aside—Decree in such suit necessary—Suit by guardian—Dismissal for default, effect of—Suit by lessee for rent—Objection by tenants as to validity of lease. A

the properties by sale, mortgage, etc. The mother of the minor son granted a lease of the lands for fifteen years in favour of the plaintiff, and died a few months thereafter. The

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s. 10—concl'd.

zamindar, the father and natural guardian of the minor, sued to set aside the lease, but the suit was dismissed in consequence of the zamindar's default in obeying an order of the Court to appear in person. The plaintiff, as the lessee of the lands, sued to recover *melvaram* due to him from the defendants who were the ryots but did not join the minor grantee as a party to the suit. The defendants contended that the lease to the plaintiff was not valid and that the plaintiff was not entitled to recover rent from them. *Held* (on a construction of the deed), that both the mother and the minor son obtained under the grant an estate in the property and were tenants-in-common during the life-time of the mother after which the son was to hold the whole property. The provisions against alienation contained in the deed of grant were absolute restraints on alienation and were void under section 10 of the Transfer of Property Act and under the Hindu Law. The lease for fifteen years granted to the plaintiff by the mother acting as guardian of her minor son, even if it was beyond the powers of a guardian, was not void against the minor but only voidable by him. The party who is entitled to avoid a transaction may do so by an unequivocal act repudiating the transaction or by getting a decree of Court setting it aside. When a guardian (natural or appointed) of a minor has given a lease, another guardian cannot set it aside by a mere act of repudiation: he can do so only by obtaining a decree of Court in a suit which may be instituted on behalf of the minor during his minority; but his action in instituting a suit to set it aside (which was dismissed for his default) has no greater effect than his mere act of repudiation: *Held*, consequently, that the plaintiff was entitled to recover rent from the defendants under the lease. *MUTHUKUMARA CHETTY v. ANTHONY UDAYAR* (1914)

I. L. R. 38 Mad. 867

ss. 36 and 108—

See LESSOR AND LESSEE.

I. L. R. 38 Mad. 86

s. 52—*Lis pendens*—Contentious suit, meaning of—*Friendly suit*, no contest—*Plea of lis pendens* not taken in the written statement—*Point of Law*—*Plea permitted after remand*. The words "contentious suit" in section 52 of the Transfer of Property Act (IV of 1882) are used in contradistinction to a friendly suit in which there is no contest. Every suit other than such a friendly suit, by its origin and nature, falls within the definition of a contentious suit. *Jogendra Chander Ghose v. Fulkumari Dassi*, I. L. R. 27 Cal. 77, followed. *Krishna Kamini Debi v. Dino Mony Choudhurani*, I. L. R. 31 Cal. 658, and *Upendra Chandra Singh v. Mohri Lal Marwari*, I. L. R. 31 Cal. 745, dissented from. *Faiyaz Khan v. Prag Narain*, I. L. R. 29 All. 339. A point of law such as *lis pendens* was argued before the first court and which

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s. 52—concl'd.

no further facts than those already on record must be considered by the Appellate Court though the defendants did not plead it in the written statement. *KATHIR v. MAREMADISSA* (1913)

I. L. R. 38 Mad. 450

s. 53—

See MORTGAGE BY MINOR.

I. L. R. 38 Mad. 1071

Fraudulent transfer—

Transfer voidable at the option of the person defrauded—*Purchaser at Court sale not a subsequent transferee*—*Person having interest in the property means person having interest at the date of the transfer*. The plaintiff purchased certain lands in 1906. In execution of a money-decree against the vendor, the lands were sold at a Court auction and purchased by the defendant in 1909, with full notice of the sale of 1906. The defendant having been put into possession of the lands, the plaintiff sued to recover possession relying on the sale of 1906. The defendant contended that the sale was not genuine and was not supported by consideration and was made with the object of defeating the creditors of the vendor. The trial court negatived the contentions and decreed the plaintiff's claim. The lower appellate Court held that the sale of 1906 was bad under section 53 of the Transfer of Property Act, as the consideration was grossly inadequate, the sale was effected with the object of defeating and delaying the creditors of the vendor, and the plaintiff participated in the fraud. The plaintiff having appealed:—*Held*, that the sale of 1906 could not be avoided, under section 53 of the Transfer of Property Act (IV of 1882), at the option of the defendant, who was not a creditor of the vendor, or a subsequent transferee or a person having an interest in the property, within the meaning of the section. Having regard to the preamble as well as section 5 of the Transfer of Property Act (IV of 1882), a person who steps in by operation of law and not by any act of the owner is not a subsequent transferee within the meaning of section 53 of the Act. A person having an interest in the property within the meaning of section 53 means the person who has such interest at the time of the transfer objected to. *VASUDEO RAGHUNATH v. JANARDHAN SADASHIV* (1915)

I. L. R. 39 Bom. 507

s. 54—

1. *Salc—Condition attached to the payment of the purchase-money—Public policy*. Where a deed purporting to be a sale deed contained a stipulation that the price should be paid within one year, provided that possession was obtained within that time; if possession was not obtained, then the payment of the price should be postponed, and further that in event of the vendee not getting the property, the price should not be paid at all: *Held*, that the stipulation was void as being repugnant to the meaning of the Transfer of Property Act.

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Act, and the condition postponing the payment of the consideration was not contrary to public policy. *KAULESHAR PRASAD MISRA v ARADI BIRI* (1915) . . . I. L. R. 37 All. 631

2. *Recovery—No bar to recovery of possession—Construction of statute* An agreement by the plaintiff to reconvey the property to the defendant made contemporaneously with the sale deed cannot be pleaded in bar of plaintiff's right to recover possession under the deed of sale. The provisions of section 54 of the Transfer of Property Act are imperative. The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts. *Kurri Veerareddi v Kurri Bapireddi*, I. L. R. 29 Mad 336, followed. *TIMANGOWDA v. BENERGOWDA* (1915)

I. L. R. 39 Bom. 472

s. 55—

See CHUKANI RIGHT

I. L. R. 42 Calc. 23

s. 55 (2)—

See SALE DEED I. L. R. 33 Mad. 1171

s. 55 (4)—

See DEBT I. L. R. 42 Calc. 349

ss. 55, 58, 100—

See RATES AND TAXES

I. L. R. 42 Calc. 625

s. 59—*Mortgage deed executed by pardanashin ladies, attestation of—Requirements as to identity of executants, and as to witnesses seeing signatures made—Waiver of right of priority by first mortgagee in favour of second mortgagee—Right to recover unsatisfied portion of claim in subsequent suit from purchaser of mortgagor's interest in other property comprised in mortgage.* In a suit on a mortgage executed by two pardanashin ladies, the defendant objected that the deed had not been duly attested in accordance with the provisions of section 59 of the Transfer of Property Act (IV of 1882), as interpreted in the decision of the Privy Council in *Shamu Patil v Abdul Kadir Ravathan*, I. L. R. 35 Mad 607. I. L. R. 39 I. A. 218, and was therefore not operative as a mortgage. On this point the High Court differed, Sir H. G. RICHARDS, C. J., finding that the attestation was not complete, because the attesting witnesses had not actually seen the signatures of the executants put on the deed, and Sir P. C. BANERJI being of opinion that that requirement as well as all others necessary had been observed. *Hdd*, (upholding the finding of BANERJI, J.), that the deed had been duly attested within the meaning of section 59 of the Act. Two at least of the witnesses were well acquainted with the executants, and though they did not see their faces, they recognized their voices and saw them sign the mortgage deed. *Hdd* (affirming

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the decision of the High Court), that the plaintiffs (respondents) had not in a former suit insisted on their right as prior mortgagees, but had waived it in favour of the second mortgagees, and so left their claim only partly satisfied, did not, under the circumstances of the case, disentitle them from recovering the unsatisfied portion of the debt in the present suit from the appellants (defendants) who were purchasers of the mortgagor's interest in other portion of the property comprised in the mortgage. *PADARATH HALWAI v RAM NAIN URBHIA* (1915) . . . I. L. R. 37 All. 474

ss. 60 and 91—*Redemption, suit for, by the owner of a portion of the equity of redemption—Mortgagee in possession—Vendee from other co-owners of the equity of redemption—Payment by vendee of his share of mortgage-amount to the mortgagee—Possession, surrender of, by mortgagee to vendee of aliquot portion of lands—Objection by mortgagee and vendee to redemption of the whole mortgage and surrender of the whole mortgaged property—Redemption of plaintiff's share only on payment of his share of debt—Possession of lands, right to, by fair partition in a suit for redemption—Equities on partition—Transfer of Property Act (IV of 1882), s. 91, construction of.* Where the plaintiff (an owner of a half share in the equity of redemption) sued the mortgagee and the owner of the other half of the equity of redemption, who had redeemed one half of the mortgage, for redemption of the whole mortgage and for the recovery of possession of the whole

of possession of half the mortgaged lands in respect of such share. The owner of a portion of the equity of redemption is not entitled as matter of right to redeem the whole of the mortgage and recover possession of the whole of the mortgaged property, on payment of the whole of the mortgage amount against the will of the mortgagee in possession and of the vendee of another portion of the equity of redemption who was put in possession of some of the lands by the mortgagee on payment of an aliquot portion of the mortgage amount. The question whether the Court will allow redemption of the whole of the mortgage at the instance of a person entitled to a part only of the equity of redemption must depend on the circumstances of each case and the rights acquired by the mortgagee or by third persons subsequent to the mortgage. *Kuray Mal v. Puran Mal*, I. L. R. 2 All 565, *Munshi v. Daulat*, I. L. R. 29 All 262 and *Nawab Azimut Ali Khan v. Jashahr Singh*, 13 Moo. I. A. 404, followed. *Huthasanam Nambudri v. Parameswaran Nambudri*, I. L. R. 22 Mad. 209, dissented from. Section 91 of the Transfer of Property Act explained. *RATHNA MUDALI v. PERUMAL REDDY* (1912)

I. L. R. 38 Mad. 310

TRANSFER OF PROPERTY ACT (IV OF 1882)—contd.

ss. 60 and 98—*Mortgage deed, simple and usufructuary combined*—No anomalous mortgage—*Redeemable*—Mortgagee, to be vendee on mortgagor's failure to pay at the stipulated time—Whether mortgage by conditional sale. Where a usufructuary mortgage deed provided that if the mortgage-amount was not paid on the stipulated date, the mortgage was to work itself out as a sale for the principal amount and further contained a covenant that the mortgagor would pay to the mortgagee the costs of the construction of earth-work, etc., on the date fixed for redemption as per the accounts of the mortgagee. *Held*, that it was not an anomalous mortgage as defined in section 98 of the Transfer of Property Act; the word "not" in section 98 governing equally the words "a combination of the first and third or the second and third of such forms" in the section; and that therefore it was redeemable. *Amarchand v. Kila Marar*, I. L. R. 27 Bom. 600, and *Ammanna v. Gurumurthi*, I. L. R. 16 Mad. 64, dissented from. *Perayya v. Venkata*, I. L. R. 11 Mad. 403, and *Ankinedu v. Subbiah*, I. L. R. 35 Mad. 744, followed. *Per* SADASIYA AYYAR, J. It is a combination of a simple mortgage and a usufructuary mortgage clogging the equity of redemption. A mortgage deed which begins as a mortgage transaction, cannot be called a mortgage by conditional sale, though it is a mortgage giving the mortgagee, after a certain time and on breach of certain conditions, a right to claim title as vendee. *Per* SPENCER, J. It is either a usufructuary mortgage deed with a clog on the equity of redemption or a usufructuary mortgage combined with a mortgage by conditional sale and in either case redeemable under section 60 of the Transfer of Property Act. *Gopalasami v. Arunachella*, I. L. R. 15 Mad. 304, referred to. *Kangayya Gurukul v. Kalimuthu Annavi*, I. L. R. 27 Mad. 526, distinguished. *SRINIVASA AYYANGAR v. RADHAKRISHNAM PILLAI* (1913) I. L. R. 38 Mad. 667

ss. 61, 85 and 99—*Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 1 and 14*—Mortgagee holding two mortgages—Suit on the second mortgage subject to his interest in a prior mortgage—*Maintainability*. It is open to a mortgagee to bring a suit for the recovery of his debt by sale of the properties mortgaged to him subject to his interest in a prior mortgage. *SUBRAMANIA v. BALASUBRAMANIA* (1915) I. L. R. 38 Mad. 927

ss. 65, 72, 101—

See MORTGAGE I. L. R. 38 Mad. 18

s. 72—*Mortgage—Right of mortgagee in possession to charge for repairs and additions to the mortgaged property*. During the subsistence of a mortgage of a house, the mortgagee being in possession, a portion of the house, consisting of a *kachcha* room, fell down. The mortgagee replaced this at a cost of Rs. 147-6, making it *pucca*. But he then proceeded to add, without the consent of the mortgagor, an upper storey

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s. 72—contd.

at a cost of Rs. 113 and a staircase costing Rs. 46-8-6, and, on suit by the mortgagor for redemption, he claimed a right to add the various sums so spent to the principal mortgage money, which was Rs. 400. *Held*, that the mortgagee's claim could only be allowed in so far as it fell within the terms of section 72 of the Transfer of Property Act, 1882, and it was allowed as to the first item, but not as to the upper storey or the staircase. *Arunachella Chetti v. Sithayi Ammal*, I. L. R. 19 Mad. 327 and *Sammo v. Abdul Wahid*, *All. Weekly Notes*, 1883, 208, followed. *Rahmat-ullah v. Yusuf Ali*, 10 *All. L. J.* 124, and *Shepard v. Jones*, 21 *Ch. D.* 469, referred to. *RUFAN SINGH v. CHAMPA LAL* (1914) I. L. R. 37 All. 81

s. 82—*Mortgage—Contribution—Charge*. In the year 1830 one Tikam Singh, who with several sons constituted a joint Hindu family, executed a mortgage of a village forming part of the joint family property. In 1889, he, with five of his sons, executed a second mortgage of the same village. In 1891, he, with two of his sons, executed a third mortgage of the same village. Tikam Singh died and the sons partitioned the village amongst them into several mahals. The first mortgagee brought a suit for sale on his mortgage, and having obtained a decree brought to sale the share of Het Singh, one of the brothers, and the mortgage was discharged. Thereafter Het Singh brought a suit for contribution and obtained a decree. After the satisfaction in this manner of the mortgage of 1880, the other brothers discharged the later mortgages of 1889 and 1891 and then brought the present suit for contribution against Het Singh. *Held*, that in these circumstances the plaintiffs were not entitled to a decree against Het Singh. *Har Prasad v. Raghunandan Prasad*, I. L. R. 31 All. 166, referred to. *KASHI RAM v. HET SINGH* (1914) I. L. R. 37 All. 101

s. 85—

See HINDU LAW—MORTGAGE

I. L. R. 42 Calc. 1068

ss. 85 to 89—

See LIMITATION

I. L. R. 42 Calc. 776

ss. 88, 89—*Application for order absolute for sale—Limitation—Limitation Act (XV of 1877), Sch. 11, Art. 179*. Where a preliminary decree for sale on a mortgage was passed on 28th September 1898: *Held*, that an application for order absolute made more than three years after that date was barred by limitation—such an application being a proceeding in execution. *Kista Bar. v. Banamoyi Debia*, 19 C. W. N. 470, reversed. *Munna Lal v. Saral Chandra Mukerjee*, 21 C. L. J. 118, s. c. 19 C. W. N. 561, referred to. *Batuk Nath v. Munni Dei*, I. L. R. 36 All. 284; s. c. 18 C. W. N. 740, and *Abdul Majid v. Jawahir Lall*, I. L. R. 36 All. 350; s. c. 18 C. W. N. 963, followed. *KISTA BAR v. BANAMOYI DEBIA* (1915) 19 C. W. N. 649

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

s. 89—Execution of a decree—*Benamidar Held*, that in an application under s. 89 of the Transfer of Property Act the fact that the court came to the conclusion that the applicants transferees, were *benamidars* was no bar to its granting an order absolute. *A benamidar* is competent to take out execution of a decree. *Intikhab Husain v Rafi un nissa, All Weekly Notes, (1907), s. 39, Yash Ram v Umrao Singh, 1 L R 21 All 330 Nand Kishore Lal v Ahmad Ala, 1 L R 13 All 69, Bachcha v Gayadhar Lal, 1 L R 28 All 44, Parmeshwar Datt v Anardam Datt, 1 L R 37 All 113, referred to KAMTA PRASAD v INDOMATI (1915)*

1 L R 37 All 414

s. 99—

See MORTGAGE

1 L R 42 Cal 780

Sale of mortgaged property in contravention of terms of section—Right of representatives of mortgagor to redeem If a mortgagee brings the mortgaged property to sale in contravention of the provisions of s. 99 of the Transfer of Property Act, 1882, such sale is not void, but merely voidable. If such a sale is confirmed, the auction purchaser, whether he be an outsider or the mortgagee bidding with the leave of the Court, obtains an indefeasible title, and the right of the mortgagor and those who represent him to redeem is absolutely extinguished. *Tara Chand v Imdad Husain, 1 L R 13 All 325, Muhammad Abdul Rashid Khan v Dilsukh Rao, 1 L R 27 All 517, Madan Mahund Lal v Jamna Kaulapuri, 2 All L J 123, and Mangi Prasad v Pati Ram, 1 All L J 360, followed Jhabba Lal v Chhagyu Mal, 4 All L J 787, over ruled Sardar Singh v Ratan Lal, 1 L R 36 All 518, Ashutosh Sikdar v Behari Lal Arinana, 1 L R 35 Cal 61, and Pancham Lal Choudhry v Kishun Pershad Meher, 14 C N N 579, referred to LAL BHADUR SINGH v ABHAKAN SINGH (1915)*

1 L R 37 All 165

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Notice

necessary to terminate tenancy, nature of—Notice signed by *am muktear* if valid—Fifteen days from date of notice, calculation of The defendant took the premises in suit for a stationery shop as a tenant from the commencement of the Revenue year

in occupation after the end of the year and the landlords accepted rent for the next year. The plaintiff landlords subsequently served a notice to quit by registered post. The notice was signed by an *am muktear* and was dated the 16th Baisakh and called upon the defendant to vacate the premises within the 31st Baisakh. The registered cover which was addressed to the defendant at his place of business was returned to the sender

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*s 106—*concld*

by the Postal authorities with an endorsement that the addressee had refused to accept it. There was no oral evidence to show where the cover was posted or when and where it was tendered to the defendant. On the cover were the seals of the office of posting and the office of destination as also an endorsement that the letter was returned as the addressee refused to receive it the seals and the endorsement bearing date corresponding to the date of the notice. *Held*, that under s 107 of the Transfer of Property Act which is a

by a registered instrument and consequently the defendant became a tenant for one year only and in the absence of an agreement to the contrary within the meaning of s 116 of the Act, the effect of his holding over was that after the expiry of the year in which the tenancy took effect, it was renewed from month to month and was terminable by the lessors by fifteen days' notice expiring with the end of a month of the tenancy. That the notice was a fifteen days' notice and was properly signed. It was not intended to be

were held to be excluded. *GOBINDA CHANDRA SHARMA v DWARAKA NATH PATITA (1914)*

19 C W N 489

s 108—

See LANDLORD AND TENANT

1 L R 38 Mad 710

1 Working of new mines by lessee—Mining lease from the holder of maintenance grant for life—Absence of express authorisation to work new mines in deed of grant—Contract of parties, reliance on for ascertaining intention of grantor—Open mine, what is Three of the principal defendants held a mining lease of the disputed properties from defendant No 1 to whom the property had been given for her maintenance for life by the former proprietor. The deed did not contain any express provision

for a declaration that these four defendants had no right to open new mines and to raise minerals

s. 108 of the Transfer of Property Act which

work mines or quarries not open when the lease was granted and no question of local usage arising

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*s. 108—*contd.*

in the present case and there being no express provision authorising the grantee to open new mines and to appropriate the minerals therefrom in the deed which was one for maintenance for the life of the grantee, the grantee had no right to grant a mining lease for the purpose of opening and working new mines. Circumstances under which a mine may be said to be open considered. *CHRISTIAN v. NARBADA KOERI* (1914)

19 C. W. N. 796

2. *Fixture, right of tenant to remove—Acquisition of land with building by Government—Tenant if only entitled to price of material.* Held, (as to the contention that under s. 108 of the Transfer of Property Act, the right of the tenant to remove fixtures must be exercised during the continuance of the lease), that the provisions of s. 108 of the Transfer of Property Act are subject to local usage, and in the present case the leases not being determined by any notice to quit and the decree in the mortgage-suit under which the respondents lost their right not having given them an opportunity to remove the building, they should be allowed to remove them unless the appellant chose to take them on payment of compensation. In the circumstances of the case, the respondents were given one-half of the amount awarded on account of the building. *KANAILAL JALAN v. RASIK LAL SADHUKHAN* (1914)

19 C. W. N. 361

ss. 108 (c), 106—*Lease of colliery—Destruction by fire—Notice by lessee to determine lease if should be 15 days' notice.* A notice by the lessee under s. 108 (c) of the Transfer of Property Act avoiding the lease on the ground of destruction of the lease-hold property by irresistible force takes effect immediately on service. S. 106 of the Act has no application to such a notice. *DAMODA COAL COMPANY LIMITED v. HUMMOOK MARWARI* (1915)

19 C. W. N. 1019

s. 108 (j)—*Lessee or licensee—Agricultural land let for building purposes under special agreement and afterwards included in neighbouring town.* Some fifty years ago, by an agreement between the Government, the zamindars and certain butchers, a certain area of cultivated land adjoining the city of Allahabad was let in plots to the butchers for building purposes at a uniform rent of Rs. 10 per bigha. There was also a proviso against arbitrary enhancement of the rent. Subsequently, the land upon which the butchers had settled was included in the municipal limits of the city of Allahabad, and was called muhulla Atala. One of the butchers having sold his house, the zamindars sued him and his vendee under the terms of the *wajib-ul-arz* claiming either one-fourth of the price, or, in the alternative, that the site might be cleared and possession made over to them. Held, that in the circumstances these sites were not subject to the ordinary law with reference to village sites occu-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*s. 108—*concl.*

pied by agricultural tenants, but the butchers must be taken to be lessees, and in the absence of a contract to the contrary their rights as such were transferable without reference to the zamindars. *ABDUL HAQ v. DATTI LAL* (1914)

I. L. R. 37 All. 144

s. 111 (d) (f)—*Merger, doctrine of—Application to tenures in India—Equitable considerations.* The predecessors of the defendants, who held a *malguzari* tenure directly under the 16 as. zamindar, afterwards took a *mokurari* lease from the *putnidar* under 8 as. 1 gd. maliks. Held, that the conditions which would make s. 111, cl. (d), or s. 111, cl. (f), of the Transfer of Property Act, applicable did not exist in the case and the *malguzari* interest did not merge in the *mokurari* either under these provisions or under the general law. The English doctrine of merger has never been held to apply to land tenures in India in their entirety. On the other hand very eminent Judges have doubted that it does. *Woomesh Chandra Gooplo v. Raj Narain Ray*, 10 W. R. 15, and *Jibanti Nath Khan v. Gocool Chandra Choudhuri*, I. L. R. 19 Calc. 760, referred to. *Raja Kishen Datt Ram v. Raja Mumtaz Ali*, I. L. R. 5 Calc. 198, was not decided on the ground of merger. In *Promatho Nath Mitter v. Kali Prasanna Choudhury*, I. L. R. 28 Calc. 744, *Surja Narain Mandal v. Nanda Lal Sinha*, I. L. R. 33 Calc. 1212, and *Ulfat Hussain v. Gayani Dass*, I. L. R. 36 Calc. 802, apart from the application of s. 111, cl. (d), of the Transfer of Property Act, there was no equitable consideration to prevent the merging of rights, whereas in the present case there was no equitable consideration to attract the application of the doctrine of merger. In deciding whether there is a merger in equity what must be first looked at is the intention of the parties and if that be not expressed, then the Court looks to the benefit of the person in whom the interests coalesce. *Gokaldas Gopal Das v. Puran Mal*, I. L. R. 10 Calc. 1035, referred to. *AMATOO v. SHEIKH MUKSUD ALI* (1914)

19 C. W. N. 435

s. 111 (g)—

See LESSOR AND LESSEE.

I. L. R. 38 Mad. 445

s. 117—

See UNDER-RAYATI HOLDING.

I. L. R. 42 Calc. 751

ss. 118, 119, 120, 54 and 55, cl. 6 (b)—*Exchange of lands of the value of one hundred rupees or upwards—No registered instrument—Oral transfer, invalid—Parties placed in possession of the lands—Sale by one of the parties of lands obtained on exchange—No estoppel against the transferor or his creditor—No estoppel against statute—No charge for the value or price of the lands on the date of the transactions.* An exchange of immoveable property of the value of one hundred rupees and upwards can be made only by a registered instrument under

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ss 118 and 54 of the Transfer of Property Act. No estoppel can be pleaded against the directions and the prohibitions enacted by the statute law and against the rights accruing to any party by reason of such directions and prohibitions. A party

the date of the exchange under ss. 120 and 55 cl (b) of the Transfer of Property Act. *Kurri Veerareddi v Kurri Bapireddi* 1 L R 29 Mad 336 followed. *Raja Balhah v Mughlam Ahana* 1 L R 26 All 266 dissented from. *Karalia Nanubhai v Mansulkham* 1 L R 24 Bom 400 distinguished. *Muthe Venkatachellapathy v Pynda Venkatachellapathy* 23 Mad L J 652 referred to. *CHIDAMBARA CHETTIAR v VAIDILINGA PADAYACHI* (1913)

1 L R 38 Mad 519

ss 130 and 134—*Mortgage in a thing of a promissory note*—Assignee's right and liability to sue on the promissory note. By virtue of ss 130 and 134 of the Transfer of Property Act (IV

the mortgagee alone is entitled to sue on the note and in taking accounts he is liable to be debited with the amount of the note if he without any justification allows the recovery of debt barred by limitation. *Mulraj Khataw v Viswanath Prabburam* 1 L R 37 Bom 198 followed. *Shyam Kumar v Rameshwar Singh* 1 L R 32 Calc 27 followed. *MUTRUKRISHNIAH v VEE RARAGHAVA IYER* (1913) 1 L R 38 Mad 297

TRANSFERABILITY

See OCCUPANCY HOLDING

1 L R 42 Calc 172

See PALAS OR TURNS OF WORSHIP

1 L R 42 Calc 455

See UNDER RAIYATI HOLDING

1 L R 42 Calc 751

TRESPASS

See ARREST OF SHIP

1 L R 42 Calc 85

See JURISDICTION

1 L R 42 Calc 942

TRESPASSER

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 EXCEP

1 L R 38 Mad 843

tenant as—

See LIMITATION ACT (IX OF 1908) s 28 ART 47

1 L R 38 Mad 432

TRIALS

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 255 AND 342

1 L R 38 Mad 302

conduct of—

See PRESIDENCY MAGISTRATES

1 L R 42 Calc 313

TRUST

See TRUST FUND

See CONTRACT 1 L R 38 Mad. 788

See LIMITATION ACT (IX OF 1908) s 10,

SCH I ARTS 14 120

1 L R 39 Bom 572

See MAHOMEDAN LAW—WAKF

1 L R 42 Calc 933

TRUST FUND

See TRUSTEE 1 L R 38 Mad 71

TRUSTEE

See LIMITATION ACT (ACT V OF 1877) SCH II ART 190 1 L R 38 Mad 260

See RELIGIOUS ENDOWMENTS ACT (XV OF 1863) s 3

1 L R 38 Mad 1178

— absence of—

See PARTIES 1 L R 42 Calc 1135

death of pending appeal—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 92 AND 93

1 L R 38 Mad 1084

suit to remove—

See PARTIES 1 L R 42 Calc 1135

Breach of trust—Liability in damages—Failure to invest trust funds in authorised securities—Indian Trusts Act (II of 1882) s 90—Failure of unauthorised security—Degree of care and prudence—Indian Trusts Act (II of 1882) ss 25 and 29—Fund to be applied immediately or at an early date construction of—Fund payable to minor if payable to guardian—Liability of trustee for interest—Interest on damages—Indian Trusts Act (II of 1882) ss 41

1 L R 42 Calc 1135

Messrs. Arbuthnot & Co became insolvent and

the latter for damages for loss of the trust funds

TRUSTEE—concl'd.

by reason of their breach of trust. The District Judge decreed damages against the defendants who preferred a Second Appeal to the High Court. *Held*, that the defendants were liable in damages for breach of trust. As regards the amount payable to the minor son, it could not be applied for the purposes of the trust immediately or at an early date, as the trustees could not pay the money to the minor until the attainment of his majority, nor could it be paid to the guardian of the minor during minority. S. 41 of the Trusts Act permits payment to the guardian only of the income of the property. The specific provisions contained in the other sections of the Indian Trusts Act are as obligatory as the general provisions of s. 15 of the said Act. The defendants were bound to invest the trust monies in the securities specified in s. 20 of the Indian Trusts Act, and having failed to do so, they must be held to have committed a breach of trust, although they had acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs. A trustee guilty of breach of trust by not investing trust funds as required by s. 20 of the Indian Trusts Act is not exempted by s. 15 thereof from liability in damages. The Indian Courts have not been given the power (conferred by statutes in England) to protect trustees in any case where a clear breach of trust has been committed. Where a trustee invests money in an unauthorized security, this must be treated as tantamount to failure to invest within the terms of s. 23, cl. (c), of the Trusts Act, and he is liable to pay interest under that section. It may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated in s. 23, could be applied where the trust money has been lost in an unauthorized investment. The Court should have power in such cases to award interest as damages. *TIRUPATHIRAYUDU NAIDU v. LAKSHMINARASAMMA* (1912) . . . I. L. R. 38 Mad. 71

TRUSTS ACT (II OF 1882).

ss. 15 and 20—

See *TRUSTEE* . I. L. R. 38 Mad. 71

ss. 86, 89, 90, 91, and 96—

See *TRANSFER OF PROPERTY ACT* (IV OF 1882), s. 91 . I. L. R. 38 Mad. 310

TURNS OF WORSHIP.

See *PALAS OR TURNS OF WORSHIP*.

U**ULTRA VIRES.**

See *LIMITATION ACT* (IX OF 1908), SCH. I, ART. 14 . I. L. R. 39 Bom. 494

See *MERCHANT SEAMEN ACT* (I OF 1859), s. 83, CL. (4) . I. L. R. 39 Bom. 558

ULTRA VIRES—concl'd.

See *RAILWAYS ACT* (IX OF 1890), ss. 72, 47 . . . I. L. R. 39 Bom. 485

UNCONSCIONABLE BARGAIN.

See *INTEREST* . . . I. L. R. 42 Calc. 652

UNDER-RAIYAT.

1. ———— *If may acquire occupancy right—Transferability of under-raiyat's interest.* The provisions of the Bengal Tenancy Act show that an under-raiyat may, under certain circumstances, acquire an occupancy right. If he does acquire such a right, that right may be transferable by custom or local usage, but there is no authority for the proposition that the interest of an under-raiyat is *ipso facto* transferable. *AKHIL CHANDRA BISWAS v. HASAN ALI SADAGAR* (1913) . . . 19 C. W. N. 246

2. ———— *Acquisition of status of.* A person in whose favour a permanent sub-lease has been granted by a raiyat acquires on payment of rent to his grantor the status at least of an under-raiyat, if he is shown to have been in possession of the holding from before the lease. *JANAKINATH HORE v. PRABHASINI DAS* (1915) 19 C. W. N. 1077

3. ———— *Permanent lease by, if valid—Suit by lessee to recover possession from lessor.* As between grantor and grantee, a permanent lease granted by an under-raiyat is a valid document, and the grantee can recover possession of the land from the grantor on the strength of such a lease. *Gurudas Das v. Kalidas Changa*, 18 C. W. N. 882, followed. *PARUSHULLA SHEIKH v. SITAL CHANDRA DAS* (1915) 19 C. W. N. 1110

UNDER-RAIYATI HOLDING.

——— *Transferability—Transfer of Property Act (IV of 1882), s. 117—Agricultural lands—Relinquishment or abandonment, what constitutes.* An under-raiyati holding is not transferable. What is relinquishment or abandonment depends on the substantial effect of what has been done in each case. When a tenure or holding, apart from the Transfer of Property Act, is not transferable, it cannot become so unless it is expressly made so by some other statute. If it had been intended to make holdings transferable which were before non-transferable, the Legislature in framing the Bengal Tenancy Act would have said so. S. 117 of the Transfer of Property Act excludes agricultural land from the operation of the rule which makes leasehold property transferable. *Hiramoti Dassya v. Annoda Prosad Ghose*, 7 C. L. J. 555, followed. *AMINNESSA v. JINNAT ALI* (1914) . I. L. R. 42 Calc. 751

UNDER-TENURE.

See *HOMESTEAD LAND*.

I. L. R. 42 Calc. 638

UNDERTAKING.

unconditional, to pay—

See *VANTHAMANAM*.

I. L. R. 38 Mad. 660

UNDUE INFLUENCE.See *CIVIL PROCEDURE CODE (ACT X OF 1908)*, O. XXII, R. 3.

I. L. R. 38 Mad. 850

See *HINDU LAW—WILL*.

I. L. R. 39 Bcm. 441

See *INTEREST*.

I. L. R. 42 Calc. 652, 690

See *LEASE*

I. L. R. 38 Mad. 321

See *LIMITATION ACT (XV OF 1877)*, SCH II, ART 31.

I. L. R. 38 Mad. 321

1. ———— *Contract—Illegal composition of non compoundable offence—Shipping prosecution—Suit for refund—Contract Act (IX of 1872)*, ss. 16, 19 No refund of money or return of security, given under agreement not to prosecute a criminal case, will be allowed unless circumstances disclose pressure or undue influence. Mere fear of punishment in a criminal case does not constitute undue influence. *Jones v Meronethshire Building Society*, [1892] I. Ch. 173, referred to. *AMJADENNESSA BIBI v. RAHM BUKSH SHIEDAR* (1914) I. L. R. 42 Calc. 286

2. ———— The Judicial Committee did not approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. *BAL GANGADHAR TILAK v. SURI SHRENIWAS PANDIT* (1915) 19 C. W. N. 729

UNITED PROVINCES AND OUDH ACTS.

1881—XII.

See *NORTH WESTERN PROVINCES RENT ACT*.

1881—XVIII.

See *CENTRAL PROVINCES LAND REVENUE ACT*.

1899—III.

See *UNITED PROVINCES COURT OF WARDS ACT*.

1901—II.

See *AGRA TENANCY ACT*.

1903—II.

See *BUNDELKHAND ALIENATION ACT*.**UNITED PROVINCES COURT OF WARDS ACT (III OF 1899).****UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)—concl'd.**

s. 16—concl'd.

of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under s. 16, but brought a suit upon his bonds after the property was released by the Court of Wards, held that the bonds were admissible in evidence and the suit was maintainable. *Collector of Ghazipur v. Balbhaddar Singh*, 10 All. L. J. 234, overruled. *ASHRAF ALI v. KALYAN DAS* (1915) I. L. R. 37 All. 585

s. 48—Notice of suit—Amendment of plaint—Whether fresh notice rendered necessary by amendment Certain persons who intended bringing a suit against a ward under the Court of Wards upon a promissory note of date the 20th of November, 1909, served upon the Collector by way of notice under s. 48 of the Court of Wards Act, 1899, a copy of the proposed plaint, in which they stated,—“For a long time there were money dealings between the shop of the plaintiffs and Kunwar Pohkar Singh, caste Thakur, resident of manza Ghangcha. Accordingly the said Pohkar Singh, having adjusted his account under the former promissory note, dated the 15th of November, 1907, executed a promissory note on the 20th of November, 1909.” In the course of the suit the plaintiffs discovered that they could not succeed on the promissory note of the 20th of November, 1909, inasmuch as Pohkar Singh was already a Ward of Court at the date of its execution, and accordingly asked and obtained leave to amend their plaint and base their claim entirely on the promissory note of the 15th of November, 1907. Held, that in these circumstances no fresh notice to the Court of Wards was rendered necessary by the amendment of the plaint. *McInerney v. The Secretary of State for India*, I. L. R. 38 Calc. 797, referred to. *BALDEO PRASAD v. THE COLLECTOR OF FARRUKH* (1914) I. L. R. 37 All. 13

UNITY OF OBJECT.See *MISJOINDER* . I. L. R. 42 Calc. 760**USUFRUCTUARY MORTGAGE.**

Dispossession of mortgage by a stranger, adverse to mortgagor from the time of his knowledge. Where a trespasser dispossesses a mortgagee in possession and continues in possession asserting a title adverse to the mortgagor also, such dispossession will be adverse to the mortgagor from the time the mortgagor has knowledge of the assertion (though he may not be then entitled according to the terms of the mortgage to recover possession from the mortgagee) The onus is on the trespasser to prove not only that he asserted a right adverse to the mortgagor but also that the latter knew it. *PRINIA AJYA ANBALAM v. SHUNMUGASUNDARAM* (1913) I. L. R. 38 Mad. 903

USURIOUS INTEREST.See *INTEREST* . I. L. R. 42 Calc. 690

USURY.*See JURISDICTION.*

I. L. R. 42 Calc. 116

V**VALUATION.***See COURT FEES ACT (VII OF 1870), ss. 7, CL. IV (j), 11.*

I. L. R. 39 Bom. 545

VALUATION OF SUIT.*See COURT-FEE . I. L. R. 42 Calc. 370***VARTHAMANAM (OR LETTER).**

Not stamped—Unconditional undertaking to pay—Promissory note, inadmissible in evidence—Evidence Act (I of 1872), s. 91—Suit on original liability not maintainable. A varthamanam or letter which says, "Amount of cash borrowed of you by me is Rs. 350. I shall in two weeks' time returning this sum of rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent. per month, get back this letter," amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness. *Bharata Pisharodi v. Vasudevan Nambudri*, I. L. R. 27 Mad. 1, distinguished. *Tiru pathi Goundan v. Rama Reddi*, I. L. R. 21 Mad. 49, doubted. When such a document is inadmissible for want of a stamp, to allow a suit as one on "account for money had and received," concealing the real contract of loan which had been reduced to the form of a document would nullify s. 91 of the Indian Evidence Act (I of 1872). *Polhi Reddi v. Valayudasivan*, I. L. R. 10 Mad. 94, followed. *Chinnappa Pillai v. Muthuraman Chettiar*, 9 Mad. L. T. 281, and *Mallaya v. Ramayya*, 21 Mad. L. J. 462, approved. *Krishnaji v. Rajmal*, I. L. R. 24 Bom. 360, and *Baij Nath Das v. Salig Ram*, 16 I. C. 33, dissented from. Doctrines of English Courts of Equity are not to be imported into the construction of such a document. *Per SPENCER, J.*—The mere use of the word *varthamanam*, instead of promissory note, will not deprive the document of its real character of promissory note if its terms show that it is such. *MUTHU SASTRIGAL v. VISVANATHA PANDARASANNADHI* (1913). I. L. R. 38 Mad. 660

VATANDAR.*— mortgage by—**See HEREDITARY OFFICES ACT (BOM. III OF 1874), s. 5.*

I. L. R. 39 Bom. 587

VENDEE.*— payment by—**See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 60 AND 91.*

I. L. R. 38 Mad. 310

VENDOR AND PURCHASER.

Conveyance by executor as beneficial owner—Construction of deed of sale—Inconsistency between recitals and operative part of deed—Omission to state expressly that he was conveying the property sold in his capacity of executor. Held (reversing the appellate decision of the High Court, and restoring that of the first Court), that on the construction of a deed of sale, and on the evidence in, and under the circumstances of the case, the title vested in an executor passed to the appellants under the deed, by which he together with other vendors purported to convey "all his estate, right, title, claim, and demand whatsoever" in the property sold, although he did not expressly state therein that he was conveying the property in his capacity as executor. The plain legal interpretation of the deed should not be allowed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution. The deed stated plainly that whatever right or title the vendors possessed was to go to support the conveyance, and it is a settled rule that the meaning of a deed is to be decided by the language used interpreted in a natural sense. *BIJRAJ NOPANI v. PURA SUNDARY DASEE* (1914)

I. L. R. 42 Calc. 56

VENUE.*See JURISDICTION.*

I. L. R. 42 Calc. 942

VESTING ORDER.*— effect of—**See INSOLVENCY . I. L. R. 42 Calc. 72***VILLAGE.***See MADRAS ESTATES LAND ACT (I OF 1908), s. 8 . I. L. R. 38 Mad. 891*

Proprietors of, who are —Persons who do not pay land revenue, but only tirni (grazing) charges, if entitled to share on partition of shamilat land. Persons who merely paid tirni (grazing dues) to the Government and who did not pay any land revenue assessed on the village were not proprietors of the village and were not as such entitled to a share on partition of the shamilat land of the village. *BAGGA v. SALEH* (1915). . . . 19 C. W. N. 1023

VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).*— ss. 1, 48 to 52, 58—**See CHAUKIDARI CHAKRAN LANDS.*

I. L. R. 42 Calc. 710

VRITTI.

Alienation in special cases under special conditions—Local usage and custom. As a general rule *vrittis* are inalienable. They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom. *Rajaram v. Ganesh*, I. L. R. 23 Bom. 131, referred to.

WRITTI—*concl'd*MANJUNATH SUBRAYABHAT v SHANKAR NANJAYA
(1914) I. L. R. 39 Bom. 28

W

WAGER.

See PAKKI ADAT TRANSACTIONS

I. L. R. 39 Bom. 1

WAIVER.

See CIVIL PROCEDURE CODE (ACT V OF
1908), s 86 I. L. R. 38 Mad. 635

See LESSOR AND LESSEE

I. L. R. 38 Mad. 445

See LIMITATION I. L. R. 38 Mad. 374

See MADRAS CIVIL COURTS ACT (III OF
1873), s 17 I. L. R. 38 Mad. 531

See RESUMPTION I. L. R. 39 Bom. 279

_____ of right of priority in favour of
second mortgagees—See TRANSFER OF PROPERTY ACT (IV OF
1882), s 59 I. L. R. 37 All. 474

Waiver, what is A

his right and of the facts of the case SYAMA
CHARAN BAISYA v. PRAFULLA SUNDARI GUPTA
(1915) 19 C. W. N. 582

WAJIB-UL-ARZ.

See PRE EMPTION

I. L. R. 37 All. 129, 472, 524, 573

See PRE EMPTION—WAJIB UL ARZ

WAKF.

See MAHOMEDAN LAW—WAKF.

See WAKF.

See MUSALMAN WAKF VALIDATING ACT
(VI OF 1913), s 3

I. L. R. 39 Bom. 563

_____ validity of—

See MAHOMEDAN LAW—WAKF

I. L. R. 42 Calc. 23.

WAKF VALIDATING ACT (VI OF 1913).

If would operate retros-
pectively The Wakf Validating Act (VI of 1913)
has no retrospective effect RAHIMUNISSA BIBI v
SHAIKH MANIK JAN (1914) 19 C. W. N. 78s. 3—Act, if operates retrospectively
The operation of the Musalman Wakf Validating
Act of 1913 is prospective and not retrospective
and it did not affect a previous conclusive decision
of the Court declaring a wakf to be invalid. MAHO-
MED BUKH MAJUMDAR v DEWAN AJMON RAJA
(1915) 19 C. W. N. 967

WAKF.

See CIVIL PROCEDURE CODE (1908), s 92.
I. L. R. 37 All. 86

See MAHOMEDAN LAW—WAKF.

See WAKF.

WARRANT.

See CRIMINAL PROCEDURE CODE, s. 75
19 C. W. N. 224_____ Validity of warrant—
Warrant, signed but not sealed—Arrest under such
warrant—Rescue and escape from lawful custody—
75 (1)Under
_____ affixing
of the seal of the Court is essential to the validity
of a warrant. An arrest under a warrant duly
signed but not sealed is, therefore, illegal and a
conviction under s. 225B of the Penal Code is bad
in law. MAHAJAN SHEKH v EMPEROR (1914)
I. L. R. 42 Calc. 708

WASTE LANDS.

See MADRAS ESTATES LAND ACT (I OF
1908), s. 8 I. L. R. 36 Mad. 691

WATER.

See EASEMENT I. L. R. 42 Calc. 164

See GRANT, CONSTRUCTION OF

I. L. R. 38 Mad. 424

_____ for wet lands to supply free of charge
undertaking by Government—See MADRAS IRRIGATION CESS ACT (VII
OF 1865), s 1 I. L. R. 36 Mad. 997

WATERFLOW.

_____ Agricultural lands,
upper and lower, owners of—Right of upper owner
to drain his water naturally on lower land—IndianThe
_____ R.
29 Mad 539, distinguished. An owner of upper
agricultural land is entitled to let his water flow
in its natural course without any obstruction by
the owner of the lower land, and the lower owner
is not entitled to raise any bund on his land which
will have the effect of seriously interfering with
the upper owner's cultivation and Subramanya
Ayyar v. Ramachandra Rau, I. L. R. 1 Mad 335,
and Abdul Hakim v. Ganesh Dutt, I. L. R. 12
Calc 323, followed Sangana Reddier v. Perumal
Reddier (1910), Mad W N. 545, dissented from.
RAMASAWMY v RASI (1913)

I. L. R. 38 Mad. 149

WIDOW.

See BARUANA GRANT.

I. L. R. 42 Calc. 582

See HINDU LAW—ADOPTION.

I. L. R. 39 Bom. 441

See HINDU LAW—DEBT.

I. L. R. 39 Bom. 113

WIDOW—concl.

See HINDU LAW—INHERITANCE.

I. L. R. 42 Calc. 1179

See HINDU LAW—WILL.

I. L. R. 37 All. 422

— adoption by—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

— adoption by, her brother's son—

See HINDU LAW—ADOPTION.

I. L. R. 37 All. 359

— alienation by—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

See HINDU LAW—ALIENATION.

I. L. R. 37 All. 369

— devise to—

See HINDU LAW—WILL.

I. L. R. 42 Calc. 561

— maintenance of—

See HINDU LAW—MAINTENANCE.

I. L. R. 38 Mad. 153

WIFE.

— gift by, to husband—

See MALABAR LAW.

I. L. R. 38 Mad. 79

— interest taken by—

See MALABAR LAW.

I. L. R. 38 Mad. 79

WILL.

COL.

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| 1. CONSTRUCTION | 463 |
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See GUARDIAN. I. L. R. 42 Calc. 953

See HINDU LAW—MINOR.

I. L. R. 38 Mad. 166

See HINDU LAW—WILL.

See JOINT HINDU FAMILY.

I. L. R. 39 Bom. 245

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 254

See WILL OF PARSİ.

— revocation of—

See HINDU LAW—WILL.

I. L. R. 38 Mad. 369

— validity of—

See PROBATE . I. L. R. 42 Calc. 480

1. CONSTRUCTION.

1. ————— Construction—

Money belonging to testator but not known to him—
Residuary clause, not passing by—Rule of con-

WILL—contd.**1. CONSTRUCTION—contd.**

struction of residuary clause, in a will made in the town of Madras. A testator in the town of Madras after stating in the preliminary clauses the properties moveable and immoveable to which he was entitled and which he by subsequent clauses in the will bequeathed to various beneficiaries and legatees, finally made a bequest in the following terms: "the sum which may be left after deducting the above-mentioned legacies and such other expenses shall be utilised in my name for pooja and other charities in Vytheswarar temple." Unknown to the testator there was a sum of Rs. 4,000 lying to his credit with the Registrar of the High Court which after his death was paid to his executor on his application. In this suit by the widow of the testator for administration of the estate. *Held*, that the sum of Rs. 4,000 was not disposed of even under the above residuary clause of the will, that the plaintiff was entitled to it as on an intestacy and that the executor was liable to account for the same from the date of the testator's death on the footing of a wilful default. The residuary clause in the form in which it appears in English wills is practically unknown to the ordinary testator in Madras and the rules of construction which have been laid down by English Courts are not applicable. *KUNTHALAMMAL v. SURYAPRAKASARAOYA MUDALIAR* (1915)

I. L. R. 38 Mad. 1096

2. ————— Construction of will of Parsi—Devise to two sons in equal shares—Gift over to son of elder son, if he should have one—Failure of male issue to elder son—Provision for adopted son on failure of natural son—Adoption after testator's death and according to Parsi custom three days after death of father—Gift over to grandson on attaining majority—Elder son surviving testator—Succession Act (X of 1865), s. 411. A Parsi having two sons P and J made a will in 1866 in the following terms:—CL 2 stated "The said two sons are proprietors half and half alike and in equal (shares) of my whole estate, outstandings, debts, title and interest, and both the heirs living together are duly to enjoy the balance which may remain after the Sarkar's assessment. In this my testamentary writing I the testator have appointed my two sons as (my) heirs." CL 5 said that "P the elder son being in a confused state of mind," the management of the estate was entrusted to the younger son J "by his true and pure integrity, and both the heirs are to equally enjoy half and half alike the whole estate with equanimity with my elder son P in such a way as not to injure his (P's) rights. At present my elder son P has no male issue of his body. (He) has only a daughter. Therefore if my elder son P gets a male issue half of the estate is to be made over to him on his attaining his full age." CL 11, after prohibiting any alienation of the property, continued, "If my son P does not get a son J is to give away his son as P's *palak* (or adopted son). All the clauses of this will are applicable to the said adopted son. If a son be born of the body of

WILL—*contd*1 CONSTRUCTION—*contd*

P he (shall) on attaining (his) full age he the owner
oveable

licable
for died

and J entered upon the management of the estate having obtained probate of the will in 1867 P was twice married but had no son He died in 1897 leaving a widow and other representatives his heirs according to the Para Intestate Succession Act (XXI of 1865) who brought a suit to ascertain the rights and interests of the parties in the estate and for partition, basing their claim on P's right as the owner of one half of the estate from the date of the testator's death The defendants were J and his son B who was five years old at the death of the testator, and who it was alleged had been, though not in the testator's life time, adopted as the *palak* son of P, and, as the defendants contended succeeded under the will to the half share of the estate which P had enjoyed though on the terms of the will it had never vested in P *Held*, (affirming the decisions of the Courts below), that the proper interpretation of the will in the event that had happened the d of th to a woul of tl

tator and of his having left a son also being provided for that son not having at that time attained majority But when P himself survived the testator there were no words in the will sufficient to cut down the right of P to one half the estate to a tenancy for life, or a less period therein according to the appellant's contention On the contrary the words employed appeared suitable to the case of the entire estate being, on the testator's death, divided into two portions and of each portion then becoming the absolute property of one of the two sons of the testator The same result was arrived at by the application of s 111 of the Indian Succession Act which their Lordships agreed with the Courts below was applicable *JETANGIR DADASHY V KAIKHURU KAVASHA* (1914)

I L R 39 Bom. 296

2 PROBATE

1 ————— Probate, application for—Onus—Testamentary capacity, what is—Probate granted by Trial Court, reversed by Appellate Court—Appellate Court, when should differ from Trial Court's estimate of evidence—Signature, genuineness of, proof of—Witnesses of competency, opinion of, value of—Witness, important, but expected to be hostile, how to be examined. Where there appeared a striking resemblance between the signatures on the will and certain admitted signatures of the alleged testator, but not that

WILL—*contd*2 PROBATE—*contd*

absolute identity which, in many instances, may furnish indications of deliberate imitation by the careful forger, the High Court agreed with the Trial Court on the evidence in finding that the

day of his death, his condition was such as to necessitate the attendance of three physicians on five occasions, and the will was alleged to have been executed about two hours before his death *Held*, that in the circumstances the Court was bound to scrutinise with care and caution the evidence as to his testamentary capacity at the time when he was said to have executed the will That the burden was upon the propounders of the will to show that the testator had testamentary capacity, i.e. capacity to comprehend the nature and effect of his act, to discharge this burden, it was not enough to show that the testator was conscious when he executed the will or that he was able to maintain an ordinary conversation and to answer familiar and easy questions It is not shown that he was able to dispose of his

propounders of a will had reason to suppose that an important witness could not be trusted to tell the truth, they might have asked the Court to summon him with liberty to both parties to cross examine him, if necessary A Court will not reject a will merely because its terms appear extraordinary against clear evidence of due execution by a competent testator But where the terms are unusual and the evidence of testamentary capacity doubtful the vigilance of the Court will be roused and before pronouncing for the will the Court will require to be satisfied beyond all doubt that the testator was fully

Kumar v Bhagirathi, 9 C B N O S, 2000, 1 Hopwood, 1 P F 579, Marsh v Tyrrell, 2 Hagg Ecc Rep 84, 123, Dufaur v Croft, 3 Moo P C 136, and Harwood v Baker, 3 Moo P C 282, referred to The principle that a Court of Appeal should be extremely slow to disagree with the primary Court on a question of appreciation of oral evidence embodies a general rule, but is not of universal application. Where the Trial Court had found in favour of the will, but its decision was vitiated by its failure to test the evidence from the standpoint of the fundamental principle that the testator must be of sound and discerning mind and memory, so as to be capable of making a disposition of his property with sense

WILL—contd.**2. PROBATE—contd.**

and judgment, in reference to the situation and amount of such property and to the relative claims of different persons who were or might be the objects of his bounty, the High Court on appeal reversed that decision not so much because it formed a different estimate of the credibility of the witnesses for the propounders, but because it differed in its estimate of the effect of their statements on the assumption that they had spoken the truth. This evidence, in the opinion of the High Court, was insufficient to discharge the onus that rested on the applicants for probate. The nature of this onus discussed. *Baker v. Batt*, 2 Moo. P. C. 317, and *Panton v. Williams*, 2 Curt. 530; 2 Notes of Cases, Sup. 21, referred to. *SUSIL KUMAR BANERJEE v. APSARI DEBI* (1914)

19 C. W. N. 826

2. ————— Probate—Issue of citations, object of—Citation of infant, effect of—Citation to infant and his mother, a minor—No opposition to grant of probate—Competency of infant for revoking probate—Testator, testamentary capacity of—Onus of proof upon the executor—Probate and Administration Act (Vof 1881). Where one J died in 1901, leaving a widow S aged 14 years and a son D aged 2 months and it was alleged that J executed a will on the day previous to his death by which his three brothers G, B and M were appointed successive executors; and on G's application for probate of the will citations were issued on B and M as also upon S and D and there was no opposition and probate was granted to G in 1902; and in 1911, D, still an infant, applied through his mother S for the revocation of the probate on the ground that the alleged will had not been executed by his father J, and the District Judge without formally revoking the probate called upon the executor to prove the will in the presence of the objector, and held upon the evidence that the original grant should not be revoked: *Held*, that service of notice upon the infant D, and his mother S, a minor, was not proper service upon them, and was useless for the protection of the interest of the infant and as such D was competent to apply for revocation of probate through his mother. The object of the issue of the citation is that all persons whose interests are or may be adversely affected by the decree of the Probate Court shall have notice of the proceedings and an opportunity, should they choose to avail themselves of it, of intervening for the protection of their interests. *Held*, that this purpose was not achieved merely by issue of citations to infants and that in the circumstances of the present case, the appointment of an officer of the Court as guardian of the infant would not have afforded him any protection. *Rebells v. Rebells*, 2 C. W. N. 100, *Shoroshibala v. Anandamoyee*, 12 C. W. N. 6, and *Mortimer on Probate*, p. 535, referred to. A party who is cognizant of the proceedings and might have intervened is bound by their result and cannot be allowed to re-open them. *Komol Lochan Dutta v. Nilruttun*

WILL—contd.**2. PROBATE—concl'd.**

Mundle, I. L. R. 4 Calc. 360, Brinda Chowdhurani v. Radhica Chowdhurani, I. L. R. 11 Calc. 492, Nistarini Dabia v. Brahmomoyi, I. L. R. 18 Calc. 45, In the goods of Bhuggobutty Dasi, I. L. R. 27 Calc. 927, Durgagati Debi v. Sourabini Debi, 10 C. W. N. 995 : s. c. I. L. R. 33 Calc. 1001, Newell v. Weeks, 2 Phill. 224, Ratcliffe v. Barnes, 2 Sw. & Tr. 486, Wylcherley v. Andrews, L. R. 2 P. D. 327, and Bell v. Armstrong, 1 Add. 372, referred to. Held, that this rule of law did not apply to the circumstances of the present case. Even in cases where a party has upon notice failed to appear and contest the proceedings, the Court may, for sufficient reason, allow the proceedings to be re-opened. *Young v. Holloway*, [1895] P. 87, *Peters v. Tilly*, 11 P. D. 145, and *Ritchie v. Malcolm*, [1902] 2 I. R. 403, referred to. *Held*, also, that the District Judge ought to have revoked the grant in the first instance and then called upon the executor to prove the will. *Brindaban v. Sureswar* 10 C. L. J. 263, and *Durgagati v. Sourabini*, 10 C. W. N. 995 : s. c. I. L. R. 33 Calc. 1001, relied on. *Held*, further, on the evidence, that the testator had no testamentary capacity at the time when he was alleged to have executed the will. The High Court, in this view, revoked the grant on the probate. *Held*, also, that the onus was upon the executor to establish that the deceased had sound and disposing mind at the time when he was said to have executed the will. *Waring v. Waring*, 6 Moo. P. C. 355, referred to. *DWIJENDRA NATH SARMA PURKAYASTHA v. GOLOKE NATH SARMA PURKAYASTHA* (1914) . 19 C. W. N. 747

3. REVOCATION.

Revocation—Will lost —Presumption that it has been revoked how to be applied in India—Finding that will was revoked, based on presumption, upset in second appeal—Proof of will by copy taken from Registrar's office, without objection in the first Court—Objection on appeal that conditions for admission of secondary evidence not fulfilled, if admissible. In view of the habits and conditions of the people of India, the rule laid down in *Welch v. Phillips*, 1 Moo. P. C. 299, that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has discharged it, must be applied with considerable caution. Where in such circumstances the first Appellate Court held that the will had been revoked or cancelled, but on second appeal the Chief Court held that there was no sufficient evidence of revocation and that the more reasonable presumption was that the will was mislaid or lost or else stolen by one of the defendants after the death of the deceased: *Held*, that it was perfectly within the competency of the Chief Court to come to that finding. There was nothing definite to show that deceased who was a very old man and, towards the end of his life, imbecile, had any motive to destroy the will or was mentally competent to

WILL—*conold***3 REVOCATION—*conold***

do so whilst on the other hand there were circumstances which favoured the view that the will was either mislaid or stolen *Held* also that the first Appellate Court should not have treated a copy of the will taken from the Registrar's office which was filed and admitted in evidence in the first Court without objection as inadmissible on the ground that no sufficient foundation was laid for the admission in the first Court of secondary evidence—as if such objection had been taken in the first Court that Court would probably have seen that the deficiency was supplied *PADMAN v HANWANTA* (1915)

19 C W N 929

WILL OF PARSI

— construction of—

See *WILL—CONSTRUCTION*

I L R 39 Bom 298

WINDING-UPSee *COMPANY*

I L R 39 Bom 18 47 331

WITHDRAWALSee *PARDON* I L R 42 Calc 756**WITHDRAWAL OF SUIT**See *CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 373*

I L R 38 Mad 643

WITNESSSee *ATTESTATION OF INSTRUMENT*

I L R 37 All 350

See *COMMITMENT* I L R 42 Calc 608See *CRIMINAL PROCEDURE CODE s 339*

I L R 37 All 331

See *PERJURY* I L R 42 Calc 240See *PUBLIC PROSECUTOR*

19 C W N 28

— cross examination of—

See *CHARGE* I L R 42 Calc 957**WOMEN**

— disqualification of to perform duties of archaka—

See *CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII r 3*

I L R 38 Mad 850

— right to inherit—

See *CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII r 3*

I L R 38 Mad 850

WORDS AND PHRASES

— 'Agreement or memorandum of agreement'—

See *STAMP ACT (II OF 1899)*

I L R 38 Mad 343

WORDS AND PHRASES—*contd*

— "at once"—

See *COMPLAINT* I L R 42 Calc 19

— "becomes due"—

See *LIMITATION ACT (IX OF 1908) SCH. I, ART 132* I L R 37 All 400

— "by means thereof"—

See *CHARGE* I L R 42 Calc 957

— "case"—

See *CRIMINAL PROCEDURE CODE s 193*
I L R 37 All 286

— Collector —

See *MAJLADARS COURTS ACT (BOM II OF 1906) s 23*

I L R 39 Bom 552

— contentious suit —

See *TRANSFER OF PROPERTY ACT (IV OF 1882) s 52* I L R 38 Mad 450

— "debt"—

See *SUCCESSION CERTIFICATE*

I L R 42 Calc 10

— "destined"—

See *TRADING WITH THE ENEMY*

I L R 42 Calc 1094

— dues —

See *PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) SCH II ART 13*

I L R 39 Bom 131

— "explosive substance"—

See *CHARGE* I L R 42 Calc 957

— final"—

See *MADRAS CITY MUNICIPAL ACT (III OF 1904) s 287 (3)*

I L R 38 Mad 41

— "fire arms"—

See *MISJOINDER OF CHARGES*

I L R 42 Calc 1153

— heir next in succession —

See *MATADARS ACT (BOM VI OF 1887) s 9 10* I L R 39 Bom 478

— holds office —

See *MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) s 53 AND 60*

I L R 38 Mad 879

— "judgment"—

See *APPEAL* I L R 42 Calc 735

— owner —

See *MADRAS ASSESSMENT OF LAND REVENUE ACT s 2*

I L R 38 Mad. 1128

— partial performance —

See *HINDU LAW—ALIENATION*

I L R 38 Mad. 1187

WORDS AND PHRASES—*conclld.*

— "possession"—

See CHARGE . I. L. R. 42 Calc. 957

— "presumption of innocence"—

See CHARGE . I. L. R. 42 Calc. 957

— "property"—

See PENAL CODE (ACT XLV OF 1860), s. 185 . I. L. R. 37 All. 128

— "public purpose"—

See RESUMPTION I. L. R. 39 Bom. 279

— "putra"—

See HINDU LAW—INHERITANCE.
I. L. R. 37 All. 804

— "putra poutradi"—

See JAIGIR . I. L. R. 42 Calc. 305

— "rights to sue"—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 92 AND 93.

I. L. R. 38 Mad. 1064

— "same transaction"—

See CHARGE . I. L. R. 42 Calc. 957

— "secured creditor"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 31 . I. L. R. 37 All. 383

— "seaworthiness"—

See BILL OF LADING.
I. L. R. 38 Mad. 941

— "secundum allegata et probata"—

See SPECIFIC RELIEF ACT (I OF 1877), s. 39 . I. L. R. 39 Bom. 149

— "single transaction"—

See ATTORNEY . I. L. R. 38 Mad. 134

— "strict proof"—

See REVIEW . I. L. R. 42 Calc. 830

— "subsequent transferee"—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 53.

I. L. R. 39 Bom. 507

— "suit for land or other immoveable property"—

See JURISDICTION.
I. L. R. 42 Calc. 942

— "tavazhi"—

See MALABAR LAW.
I. L. R. 38 Mad. 48

— "trading"—

See TRADING WITH THE ENEMY.
I. L. R. 42 Calc. 1094

— "unlawfully and maliciously"—

See CHARGE . I. L. R. 42 Calc. 957

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859).

Bandsman not an artificer, labourer or workman. A bandsman is not an artificer, labourer or a workman within the meaning of those words in the Workman's Breach of Contract Act (XIII of 1859). *Re ROSARIO QUADROS* (1913) . I. L. R. 38 Mad. 551

WORSHIP.

See TURNS OF WORSHIP.

WRIT OF POSSESSION.

See BAILIFF . I. L. R. 42 Calc. 313

See PENAL CODE, s. 322.
19 C. W. N. 273

WRITTEN STATEMENT OF ACCUSED.

See CHARGE . I. L. R. 42 Calc. 957

See PENAL CODE, s. 80.
19 C. W. N. 1043

See PENAL CODE, s. 120B.
19 C. W. N. 676

Practice. Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court, they do not take the place of evidence nor of such examination of the accused as is contemplated by s. 342 of the Code of Criminal Procedure. *Emperor v. Ansuiya*, (1903) All. W. N. 1, dissented from. *AMRITA LAL HAZRA v. EMPEROR* (1915)
I. L. R. 42 Calc. 957

WRONGFUL CONFINEMENT.

See MISJOINDER . I. L. R. 42 Calc. 760

WRONGFUL POSSESSION.

See SHEBARI . I. L. R. 42 Calc. 244

WRONGFUL SEIZURE.

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

Z**ZAMINDAR.**

— grant by, to his wife and minor son—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10 . I. L. R. 38 Mad. 867

— service to—

See MADRAS REGULATION (XXV OF 1802), s. 4 . I. L. R. 38 Mad. 620

ZAMINDAR AND INAMDAR.

— pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 188 AND 269.
I. L. R. 38 Mad. 608

ZAMINDARI.

— impartible, how far joint family property—

See HINDU LAW—ADDITION.

I. L. R. 33 Mad. 1105

ZURPESHGI LEASE.

—Occupancy right, raiyati interest, acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease, effect of—The plaintiffs' suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1301 to 1315 P. S., the terms of the zurpeshgi being as follows:—"It is desired that the said ashik ticedar should take possession of the said land, make proper cultivation himself or get it cultivated by others, grow indigo seeds or any other indigo crop by using the land as his *khas zeraat* or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the *fiara*. He shall year by year deduct the said fixed *jama* in

ZURPESHGI LEASE—continued.

payment of the principal and interest of his *zara* *peeth* as per account shown below and shall pay the remainder, the amount of *lessee's* rights payable to us, towards the end of the term of the *fiara* on taking receipts therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of

that the zurpeshgi pottah did not create any raiyati interest in the defendant, far less a right

direct himself of his right to acquire a right of occupancy in the land. *LAL HANADUN HAN* v. *MACKENZIE* (1913) 10 C. W. N. 220

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